



**Request for Proposals**  
**Steigerwald Habitat Restoration and Flood Control Project**  
**“Before and After” Appraisals**

Proposal Submittal Deadline: July 14, 2017 at 4:00 pm

**I. INTRODUCTION**

The Lower Columbia Estuary Partnership (Estuary Partnership) is developing a large habitat restoration and flood control project (Project) in partnership with several public and private partners. The Project primarily will occur on lands owned by the U.S. Fish and Wildlife Service (USFWS) as part of the Steigerwald Lake National Wildlife Refuge (Refuge) in Washougal, Washington. The Project’s primary action involves modifying the Port of Camas-Washougal’s (Port) levee system, including construction of two setback levees, removal of 2.2 miles of existing levee, and reconnection of over 900 acres of historic Columbia River floodplain (Figure 1). Modification of the levee system necessitates the acquisition of easements that address four short- and long-term Project elements: 1) Project construction, 2) placement of Port infrastructure on non-Port property, 3) future operation and maintenance of the Port’s levee system, and 4) increased flood risk. The Port will hold all Project easements; Bonneville Power Administration (BPA) will fund acquisition of the easements.

**II. ANTICIPATED SCOPE OF WORK**

The Estuary Partnership requests proposals to conduct appraisals and develop “before and after” market value opinions for the following four properties located adjacent to the Refuge (Figures 2 and 3, Attachment 1):

- **Tax lot #071078-076**  
Owner: privately owned  
Property description: Rural residential property with a single-family dwelling and several auxiliary structures. The impacted portion of the property is located in the Columbia River Gorge National Scenic Area (CRGNSA) and does not have habitable dwellings.  
Easement footprint: 0.2 acres
- **Tax lot #'s 071078-073 and 071078-075**  
Owner: privately owned  
Property description: Mobile home park. The impacted portion of the property is located in the CRGNSA and does not have habitable dwellings.  
Easement footprint: 1.2 acres
- **Tax lot #135307-000**  
Owner: City of Washougal (City)  
Property description: Undeveloped parcel with remnant agricultural structures; purchased by the City for future development as a municipal well field.  
Easement footprint: 3.4 acres

- **Tax lot #135508-000** (future tax lot # to be determined)  
 Owner: Friends of the Columbia Gorge Land Trust (Land Trust)  
 Property description: The Land Trust acquired 160 acres of this tax lot in May 2017. Currently used for agricultural production (haying and cattle grazing). Located entirely within the CRGNSA.  
 Easement footprint: 122.0 acres

The before and after appraisal shall value the fee simple estate of the property in its “as is” condition except for the value of two easements (flowage and flood protection) as they apply to the “after” condition, i.e., after the Project has been constructed and is operational. The appraisal shall assume that the property is environmentally clean. The appraisal shall also adhere to BPA’s Requirements for Appraisals of Land for Potential Acquisition (Attachment 2).

Deliverables provided to the Estuary Partnership shall be draft and final versions of appraisal reports (Reports) that are compliant with Uniform Standards of Professional Appraisal Practice and Uniform Appraisal Standards for Federal Land Acquisitions. The Reports shall be suitable for valuation support of the acquisition of the easements noted above; Attachment 3 provides draft versions of the flood protection and flowage easements for two subject properties. The intended users of the Reports include the Estuary Partnership, U.S. Army Corps of Engineers, Port, BPA, and affected landowners.

### **III. ANTICIPATED SCHEDULE**

Proposal Question Period Closing: July 7, 2017 at 4:00pm

Proposal Closing: July 14, 2017 at 4:00pm

Notice of Award: July 18, 2017

Contract Executed: July 28, 2017

Draft Appraisal Report Due (City property): September 7, 2017

Draft Appraisal Reports Due (private properties): September 30, 2017

Draft Appraisal Report Due (Land Trust property): October 31, 2017

Final Appraisal Reports Due (all properties): November 30, 2017

### **IV. ESTUARY PARTNERSHIP RESPONSIBILITIES**

The Estuary Partnership will be responsible for the following work during the Project:

1. Coordinate access and other necessary activities with landowners and other stakeholders;
2. Provide background information that may be helpful, e.g., Project design drawings; and,
3. Review and provide written comments on the draft Reports.

### **V. PROPOSAL REQUIREMENTS**

Proposals shall be in the form of a cover letter, not to exceed two pages in length. The cover letter must be signed by an authorized representative of the firm and shall include the following information:

1. Qualifications of firm and lead appraiser;
2. Summary of experience conducting “before/after” appraisals;
3. Summary of experience conducting appraisals in the Columbia River Gorge National Scenic Area;
4. Budget, including total cost, a brief budget narrative, and hourly rates;
5. Schedule/Availability, including a statement regarding ability to meet the schedule outlined in Section III of this document;
6. Two references for similar work; and,
7. Statement regarding minority, women-owned, and emerging small businesses engagement.

Proposers also may attach resumes of personnel that will perform the appraisals and certifications. No additional materials should be submitted with the proposal.

## **VI. QUESTIONS AND ASSOCIATED RESPONSES/CLARIFICATIONS**

Interested parties shall direct all questions regarding this RFP to the Estuary Partnership's Deputy Director, Chris Hathaway, via e-mail: [chathaway@estuarypartnership.org](mailto:chathaway@estuarypartnership.org). Interpretations or clarifications to such questions will be posted to the Estuary Partnership's website. Questions received after 4:00 p.m. on July 7, 2017 will not be answered.

## **VII. PROPOSAL SUBMITTAL, DEADLINE, AND REVIEW**

Proposals shall be submitted electronically (PDF file format, attached to an email) to the Estuary Partnership's Deputy Director, Chris Hathaway ([chathaway@estuarypartnership.org](mailto:chathaway@estuarypartnership.org)). Proposals must be received no later than July 14, 2017 at 4:00 pm; proposals received after this date/time will not be considered. The Estuary Partnership will provide confirmations of receipt via e-mail for all submittals.

## **VIII. SELECTION PROCESS**

Proposals will be reviewed by the Project team, including representatives from the Estuary Partnership and BPA. The selection team will consider the following criteria in their evaluation of proposals:

1. Qualifications
2. Experience conducting "before/after" appraisals
3. Experience in the Columbia River Gorge National Scenic Area
4. Cost/Budget
5. Schedule/Availability
6. References
7. Participation of minority, women-owned, and emerging small businesses

During its evaluation, the Estuary Partnership reserves the right to contact references relating to the past performance of similar services and compliance with contractual obligations. The Estuary Partnership also reserves the right to accept or reject any and all of the proposals received, including without limitation non-conforming or conditional proposals. The Estuary Partnership may also reject the proposal of any proposer if the Estuary Partnership believes that it would not be in the best interest of the Project to make an award to that proposer. The Estuary Partnership also reserves the right to request the selected proposer negotiate and submit a revised statement of work, proposal, and cost estimate.

The Estuary Partnership is not obligated to pay any costs incurred by proposers in responding to this RFP.

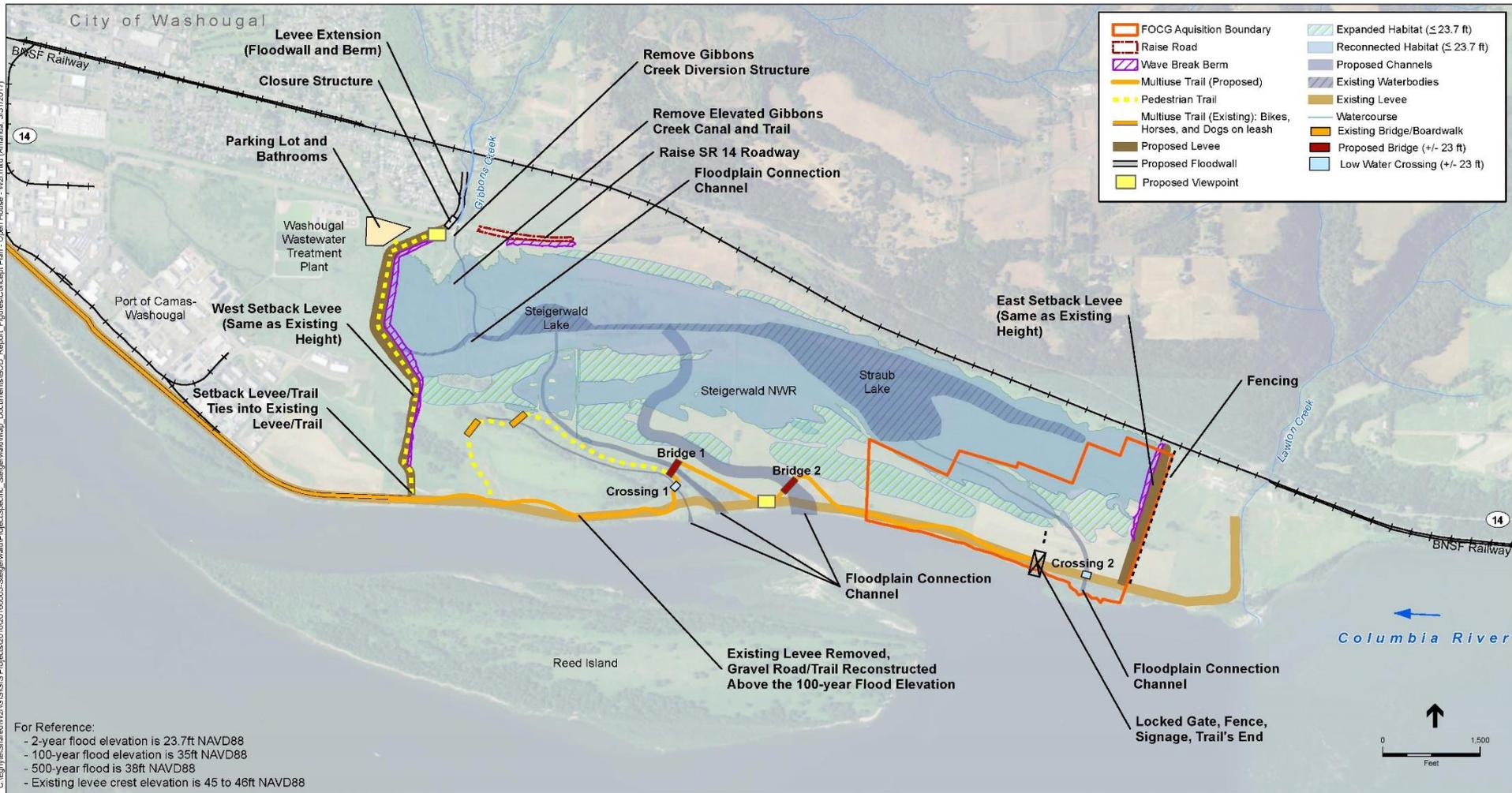
## **IX. FIGURES**

1. Overview of Proposed Project
2. Overview of Affected Properties
3. Detailed View of Affected Properties Along Gibbons Creek

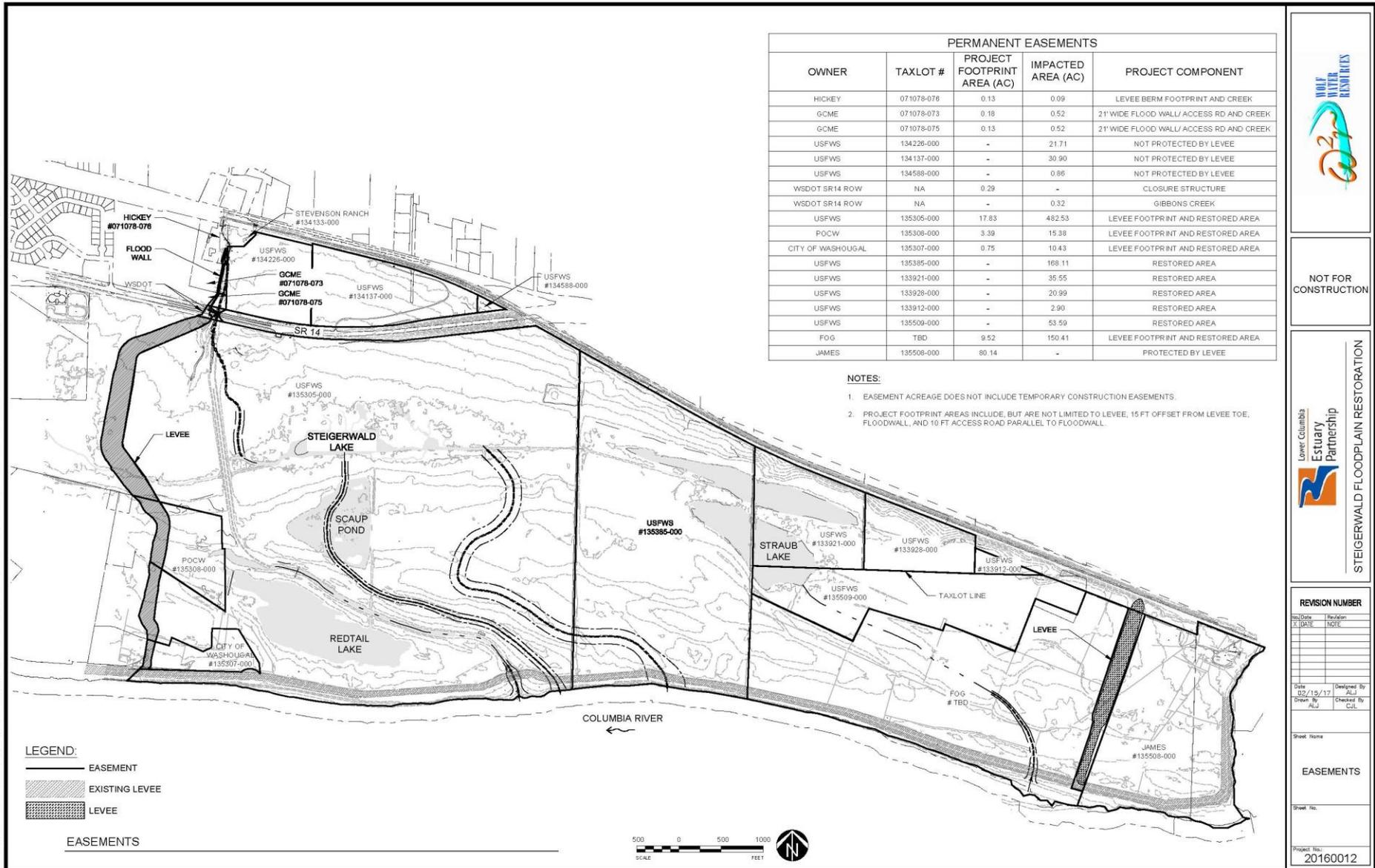
## **X. ATTACHMENTS**

1. Photo Log
2. BPA's Requirements for Appraisals of Land for Potential Acquisition
3. Draft Easements
4. Sample Contract

# FIGURE 1: Overview of Proposed Project



# FIGURE 2: Overview of Affected Properties



DATE: 02/15/2017 11:00AM PROJECT: 20160012 DRAWN BY: JAL DATE: 02/15/2017 11:00AM PROJECT: 20160012 DRAWN BY: JAL DATE: 02/15/2017 11:00AM PROJECT: 20160012 DRAWN BY: JAL



NOT FOR CONSTRUCTION

Lower Columbia Estuary Partnership  
 STEIGERWALD FLOODPLAIN RESTORATION

REVISION NUMBER

No.	Date	Revision

Sheet Name

EASEMENTS

Sheet No.

Project No.  
20160012



**Attachment 1 – Photo Log**  
**Steigerwald Habitat Restoration and Flood Control Project**



Photo 1: Affected portion of tax lot #071078-076



Photo 2: Affected portion of taxlot #071078-073



Photo 3: Affected portion of taxlot #071078-075



Photo 4: City property (Tax lot #135307-000)



Photo 5: Land Trust property (Tax lot #135508-000)

**Attachment 2 – BPA’s Requirements for Appraisals of Land for Potential Acquisition  
Steigerwald Habitat Restoration and Flood Control Project**



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

ENVIRONMENT, FISH AND WILDLIFE

November 12, 2014

In reply refer to: KEW-4

RE: Bonneville Power Administration  
Requirements for Appraisals of Land for Potential Acquisition

Dear Fish and Wildlife Project Sponsor:

Please find attached an updated draft of the "Definitions, References, and Requirements for All Appraisals Submitted for Funding to the Bonneville Power Administration Fish and Wildlife Program". In coordination with Bonneville Power Administration's (BPA) Chief Appraiser, we have a comment period of 30 days from the date of this letter so that you can provide feedback on the draft document; the final document is scheduled to take effect on January 1, 2015. Please send your comments on this draft by December 12, 2014 to Steven Bottemiller, Chief Appraiser, at: [sbottemiller@bpa.gov](mailto:sbottemiller@bpa.gov)

The purpose for these appraisal requirements and guidelines is to inform fish and wildlife project sponsors of the requirement standards for: 1) Appraisal documents submitted to BPA; and, 2) Certification requirements for all appraisers who submit appraisals to BPA on behalf of project sponsors. The appraisal requirements are reviewed annually by the Chief Appraiser to assess if changes to the requirements and guidelines are needed. We will continue to keep you informed of potential proposed changes or updates to these guidelines, and will continue to work with the sponsors throughout the appraisal process to facilitate an effective outcome.

Thank you again for your efforts to help BPA improve the real estate/property acquisition process. We intend to continue to improve the systems we use and greatly appreciate your participation in reaching that goal. As timely communications are essential throughout the land acquisition process, please contact the Chief Appraiser Steven Bottemiller at 1-800-836-6619 if you have questions about these guidelines or appraisal reviews, and contact your BPA COTR directly if you have project-specific questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "William C. Maslen".

William C. Maslen  
Director, Fish & Wildlife

Enclosure:

Definitions, References, and Requirements for all Appraisals Submitted for Funding to the Bonneville Power Administration Fish and Wildlife Program

cc: (electronic)

Mr. Tony Grover, Northwest Power and Conservation Council ([tgrover@nwcouncil.org](mailto:tgrover@nwcouncil.org))

**Bonneville Power Administration  
Fish and Wildlife Program**

**DEFINITIONS, REFERENCES, AND REQUIREMENTS  
FOR ALL APPRAISALS SUBMITTED FOR FUNDING  
TO THE BONNEVILLE POWER ADMINISTRATION  
FISH AND WILDLIFE PROGRAM**

**Effective:  
January 1, 2015**

**DEFINITIONS, REFERENCES AND REQUIREMENTS  
FOR ALL APPRAISALS SUBMITTED  
FOR FUNDING TO THE BONNEVILLE POWER ADMINISTRATION (BPA)  
FISH AND WILDLIFE PROGRAM**

**I. COMPLIANCE DATE FOR THE ENCLOSED REQUIREMENTS AND GUIDELINES**

The requirements and guidelines set forth in this transmittal take effect on January 1, 2015. Appraisal reports under contract before the effective date will be accepted for review by the BPA under the previous version of this document.

**II. COMPLIANCE WITH FEDERAL REQUIREMENTS AND GUIDELINES**

All appraisal work must be in compliance with the following appraisal requirements and guidelines:

1) Uniform Appraisal Standards for Federal Land Acquisitions [(UASFLA) “Yellow Book”]

(<http://www.justice.gov/enrd/land-ack/Uniform-Appraisal-Standards.pdf>)

2) Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs (49 CFR Part 24), revised in January 4, 2005 (Public Law 91-646) (<http://www.fhwa.dot.gov/realestate/ua/index.htm>).

3) The Uniform Standards of Professional Appraisal Practice (USPAP)  
<https://netforum.avectra.com/eWeb/DynamicPage.aspx?Site=TAF>

**III. SPECIFIC MINIMUM APPRAISAL REPORT COMPLIANCE ITEMS REQUIRED IN ALL REPORTS PREPARED FOR BPA USE**

1. Proper documentation of the landowner contact and an invitation to the landowner to accompany the appraiser on the property inspection must be included in the body and certification of each appraisal report. Verification of the contact information can be included as a separate section/heading in the body of the report or in the appraiser’s Certification. Public Law 91-646 [49 CFR Part 24.102(f) Basic Acquisition Policies] and UASFLA “The Yellow Book”, Section D-14 Pages 100-101.
2. Definition of “Market Value”: UASFLA “The Yellow Book”, Section A-9 Page 13.
3. Highest and Best Use must be based on an economic use: UASFLA “The Yellow Book”, Section A-14 Page 18.

4. The appraisal valuation conclusion must be based on an economic use and not a Public or Special Interest Use Value premise.
5. A ten-year sales history of the subject property (ies) together with the last sale of the property irrespective of the date and any listings or prior offers within said time period are required: UASFLA "The Yellow Book", Section A-13e Page 15.
6. Note: "Comparison of USPAP and the Uniform Appraisal Standards for Federal Land Acquisitions": UASFLA "The Yellow Book", Section D-1 Pages 77-79.
7. Reference linking the "Estimate of Value to a Specific Exposure Time" shall not be included in the appraisal report: UASFLA "The Yellow Book", Section A-9 Page 13, Section D-1(b) Page 78.
8. Scope of Work: The applicability of all standard approaches to value shall be discussed and the exclusion of any approach to value shall be explained: UASFLA "The Yellow Book" Section A-8 Page 12.
9. All comparable sale data shall comply with the UASFLA "The Yellow Book" requirements cited under B-4 pages 37-40 and Section A-17 pages 20 to 22.
10. Comparable sales (to and/or for other government agencies) requiring Extraordinary Verification and Treatment must be addressed in an appropriate manner: UASFLA "The Yellow Book", Section D-9 Page 84.
11. The Date of Value shall be the last Date of Physical Inspection of the subject property by the appraiser.
12. Submit appraisal report(s) to the BPA for review and approval through the BPA Realty Group at: [F&WAppraisals@bpa.gov](mailto:F&WAppraisals@bpa.gov)
13. The larger parcel shall be identified and the impact of the acquisition on the larger parcel needs to be analyzed: UASFLA "The Yellow Book" Section B-11, Pages 47 through 41 and Section B-13 Pages 53 through 55.
14. Color photographs of the subject and all comparable properties, together with a location map clearly exhibiting all sales in relation to the subject, must be included in all copies of the appraisal report. The photo caption should identify the subject of the photo, name of person taking the photo and date taken: UASFLA "The Yellow Book" Section A-17 Pages 21-22. The location map must have appropriate distinguishing landmarks to assist the appraiser during a field inspection.
15. A GPS coordinate or Quarter Section, Township, Range, legal description is required for the subject property(s) as well as for all comparable sales used in the

report. The BPA will be using these coordinates and/or legal descriptions in completing a field review of the report.

16. Discussion relative to the comparable properties used in the appraisal report shall include individual narrative comments and adjustment conclusions as to the value each comparable property indicates for the subject, together with an overall summary conclusion. If an adjustment grid tabulation is used, it shall be clearly presented containing all adjustments and supported through market sources: UASFLA "The Yellow Book" Section A-17 Pages 21-22.
17. The Appraisal Certification shall include a statement indicating the contract appraiser has personally inspected the appraised property and all comparable sale properties used in arriving at the estimate of value.
18. The Appraisal Certification shall include the appraiser's opinion of the market value of the property appraised and the date of valuation. The appraisal will be rejected if these items are not present: UASFLA "The Yellow Book" Section A-4 Page10.
19. The appraisal employment contract including the appraisal instructions and fee for appraisal services must be included in the addenda of the appraisal report.
20. The enclosed checklist must be filled out and located in the addenda of the appraisal report. Failure to include this completed checklist may cause immediate rejection of this report.
21. The appraiser shall examine and comment on the subject property's title report in the body of the appraisal report. A copy of the title report shall be included in the addenda of the appraisal report.
22. The appraiser shall examine any and all water or mineral (oil, gas, sand, gravel, precious/heavy metals, etc.) rights and state any and all findings, conclusions and valuation impacts in the report.
23. The appraiser shall consider any management plans and/or conservation easements in existence or proposed that affect the subject and/or comparable sales. An analysis of these plans or easements needs to be explained in the report.

#### **IV. DOCUMENTATION**

The appraiser (s) will provide to BPA one hard copy and one electronic PDF copy of any appraisal report submitted to BPA for consideration. The electronic copy shall be sent to: [F&WAppraisals@bpa.gov](mailto:F&WAppraisals@bpa.gov).

The BPA needs to be listed as either the client or an intended user of the report. It is further recommended that the phrase "For the United States Government Agencies and

Bureaus use (attention: The Bonneville Power Administration)” be used when applicable. The BPA Appraisal Department will accept appraisals with dates of value within six months of the time of receipt in the department. Reports with dates of value exceeding six months may or may not be accepted. Appraisal report updates are acceptable for reports dating back two years.

## **V. APPRAISER REQUIREMENTS**

The principle appraiser must be a Certified General Appraiser in the State where the subject property is located or hold a Certified General Appraiser license in another state that will be granted reciprocity by the state licensing agency governing the location of the subject property (s).

**All** appraisers providing easement related appraisals for The BPA Fish and Wildlife program **will** be required to show proof of attendance and passing a Valuation of Conservation Easement course of study with a Certificate Program approved by BPA’s Chief Appraiser. In addition, **all** appraisers are required to have taken a UASFLA “The Yellow Book” course/seminar and passed the appropriate examinations. Proof of attendance and passing the appropriate examinations must be included by verifiable reference or exhibit in the report.

## **VI. VALUATION METHODS TO BE USED**

Valuation Methods to be used are to be determined by the appraiser (s) and must be consistent with the prior referenced Federal Requirements in Section I. If conflicts arise between the requirements of UASFLA The Yellow Book, Public Law 91-646 (49 CFR Part 24), revised in January 4, 2005 and USPAP, The BPA Appraisal Staff assigned to the project will instruct the appraiser(s) regarding which requirements are to be followed. The BPA appraisal staff is available to respond to questions by the appraiser(s) regarding appraisal methodology and procedures.

## **VII. UPDATES AND/OR REVISIONS**

The Definitions, References and Requirements set forth in this document will be reviewed annually and updated/revised when changes occur in Federal and/or USPAP Requirements, Regulations and Guidelines. In the event the BPA Appraisal Department experiences high incidents of appraisal rejection due to substandard appraisal practices that are permeating the appraisal industry, BPA’s Chief Appraiser may require additional changes to these definitions, references and requirements prior to the annual review. Notification of these changes will be provided to the project sponsors in a timely manner.

## APPRAISAL REQUIREMENTS CHECK LIST

BPA REQ. #	APPRAISAL REPORT PAGE(S) / #	MINIMUM / SPECIFIC APPRAISAL REQUIREMENTS
III-01	_____	Documentation of the landowner contact
III-02	_____	Market Value Definition
III-03	_____	Highest and Best Use
III-05	_____	Subject Sales History
III-07	_____	Exposure Time is <b>not</b> to be included in the report
III-08	_____	Scope of Work
III-10	_____	Use of Extraordinary Verification of Sales
III-11	_____	Date of Value
III-13	_____	Larger Parcel Identification
III-14	_____	Subject Photos
III-14	_____	Comparable Photos
III-14	_____	Sale Map
III-15	_____	BPA GPS/Legal Description Requirements
III-16	_____	Sales Data Compliance with UASFLA
III-16	_____	Sales Analysis
III-16	_____	Adjustment Grid
III-16	_____	Adjustment Analysis
III-17	_____	Appraisal Certification with UASFLA Requirements including Personal Inspection Criteria
III-18	_____	Appraisal Certification with UASFLA Requirements
III-19	_____	Appraisal Contract
III-21	_____	Title Report
III-22	_____	Water or Mineral Rights
III-23	_____	Management Plans and/or Conservation Easements
V	_____	Valuation Conservation Easement Certificate

**Attachment 3 – Draft Easements**  
**Steigerwald Habitat Restoration and Flood Control Project**

After recording return to:  
Port of Camas-Washougal  
24 South A Street  
Washougal, WA 98671

## **FLOOD PROTECTION (LEVEE) EASEMENT**

THIS FLOOD PROTECTION (LEVEE) EASEMENT is made by the City of Washougal and its assigns (“GRANTOR”) and the Port of Camas-Washougal and its assigns (“GRANTEE”) of Clark County, Washington.

WHEREAS, the GRANTOR is the owner of real property located in Clark County, Washington, which is legally described in Exhibit A (the “CITY PROPERTY”); and,

WHEREAS, the GRANTEE is the holder of certain easements for flood protection purposes affecting adjacent property and desires to hold a similar easement on the CITY PROPERTY to facilitate the flood protection levee authorized by the Flood Control Act 1950, House Document 531, Eighty-first Congress, 2nd session as amended by U.S. Army Corps of Engineers in Permit # \_\_\_\_\_ dated \_\_\_\_\_, 2018 and as may be otherwise amended from time to time (“Steigerwald Habitat Restoration and Flood Control Project” or “PROJECT”), which is partially located on the CITY PROPERTY.

**NOW THEREFORE**, for and in consideration of the sum of XX dollars (\$XX.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, GRANTOR hereby grants and conveys to the GRANTEE the perpetual and assignable right and easement in, over, under, upon and across that portion of the CITY PROPERTY legally described in Exhibit B and shown in Exhibit C (the “EASEMENT AREA”), for levee and flood protection purposes, including but not limited to the rights to construct, maintain, repair, operate, patrol and replace a flood risk reduction levee associated with the PROJECT, and all appurtenances thereto, together with the right of entry and access across the CITY PROPERTY to and from the EASEMENT AREA with all persons, vehicles, materials, and equipment to carry out the rights and purposes of GRANTEE under this Flood Protection (Levee) Easement; reserving, however, to the GRANTOR all such rights and privileges in the EASEMENT AREA as may be used without interfering with the PROJECT or the use of the EASEMENT AREA or entry and access across the CITY PROPERTY for the PROJECT or otherwise abridging the rights and easement hereby acquired by GRANTEE; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

GRANTEE will exercise its rights under this easement with the least amount of disturbance to the CITY PROPERTY outside of the EASEMENT AREA as commercially reasonably practical given the purposes of and rights granted under this easement and will, to the fullest extent commercially reasonably practical, restore such portions of the CITY PROPERTY to the condition existing prior to GRANTEE’s exercise of such rights after the work requiring the exercise of such rights is completed.





**EXHIBIT A**  
**LEGAL DESCRIPTION OF CITY PROPERTY**

**EXHIBIT B**  
**LEGAL DESCRIPTION OF FLOOD PROTECTION (LEVEE) EASEMENT AREA**

**EXHIBIT C**  
**MAP OF FLOOD PROTECTION (LEVEE) EASEMENT AREA**



After recording return to:  
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24 South A Street  
Washougal, WA 98671

## **FLOWAGE EASEMENT**

THIS FLOWAGE EASEMENT is made by the City of Washougal and its assigns (“GRANTOR”) and the Port of Camas-Washougal and its assigns (“GRANTEE”) of Clark County, Washington.

WHEREAS, the GRANTOR is the owner of real property located in Clark County, Washington, which is legally described in Exhibit A (the “CITY PROPERTY”); and,

WHEREAS, the GRANTEE is the holder of certain easements for flowage purposes affecting adjacent property and desires to hold a similar easement on the CITY PROPERTY to facilitate the flood protection levee authorized by the Flood Control Act 1950, House Document 531, Eighty-first Congress, 2nd session as amended by U.S. Army Corps of Engineers in Permit # \_\_\_\_\_ dated \_\_\_\_\_, 2018 and as may be otherwise amended from time to time (“Steigerwald Habitat Restoration and Flood Control Project” or “PROJECT”), which is partially located on the CITY PROPERTY.

**NOW THEREFORE**, for and in consideration of the sum of XX dollars (\$XX.00) and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, GRANTOR hereby grants and conveys to the GRANTEE the perpetual and assignable right, power, privilege and easement seasonally and/or permanently to overflow, flood and submerge that portion of the CITY PROPERTY legally described in Exhibit B and shown in Exhibit C (the “EASEMENT AREA”) in connection with the operation and maintenance of the PROJECT, and the continuing right to clear and remove debris and obstructions which, in the opinion of the GRANTEE, may be detrimental to the PROJECT, together with all right, title and interest in and to and the right to remove the structures and improvements situate in the EASEMENT AREA excepting \_\_\_\_\_, (*here identify those structures not designed for human habitation which the District Engineer determines may remain in the EASEMENT AREA*), and together with the right of access across the GRANTOR’s property to and from the EASEMENT AREA with all persons, vehicles, materials, and equipment to carry out the rights and purposes of GRANTEE under this easement; provided that no structures for human habitation shall be constructed or maintained in the EASEMENT AREA, that no other structures shall be constructed or maintained in the EASEMENT AREA except as may be approved in writing by GRANTEE in its sole and absolute discretion, and that no excavation shall be conducted and no landfill placed in the EASEMENT AREA without the prior written approval by GRANTEE in its sole and absolute discretion, including but not limited to the location and method of excavation and/or placement thereof. The above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; and subject to the reservation to the owners, their heirs and assigns, of all such rights and privileges as may be used and enjoyed





**EXHIBIT A**  
**LEGAL DESCRIPTION OF CITY PROPERTY**

**EXHIBIT B**  
**LEGAL DESCRIPTION OF FLOWAGE EASEMENT AREA**

**EXHIBIT C**  
**MAP OF FLOWAGE EASEMENT AREA**



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## **FLOOD PROTECTION (LEVEE) EASEMENT**

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WHEREAS, the GRANTOR is the owner of real property located in Clark County, Washington, which is legally described in Exhibit A (the “LAND TRUST PROPERTY”); and,

WHEREAS, the GRANTEE is the holder of certain easements for flood protection purposes affecting adjacent property and desires to hold a similar easement on the LAND TRUST PROPERTY to facilitate the flood protection levee authorized by the Flood Control Act 1950, House Document 531, Eighty-first Congress, 2nd session as amended by U.S. Army Corps of Engineers in Permit # \_\_\_\_\_ dated \_\_\_\_\_, 2018 and as may be otherwise amended from time to time (“Steigerwald Habitat Restoration and Flood Control Project” or “PROJECT”), which is partially located on the LAND TRUST PROPERTY.

**NOW THEREFORE**, for and in consideration of the sum of XX dollars (\$XX.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, GRANTOR hereby grants and conveys to the GRANTEE the perpetual and assignable right and easement in, over, under, upon and across that portion of the LAND TRUST PROPERTY legally described in Exhibit B and shown in Exhibit C (the “EASEMENT AREA”), for levee and flood protection purposes, including but not limited to the rights to construct, maintain, repair, operate, patrol and replace a flood risk reduction levee associated with the PROJECT, and all appurtenances thereto, together with the right of entry and access across the LAND TRUST PROPERTY to and from the EASEMENT AREA with all persons, vehicles, materials, and equipment to carry out the rights and purposes of GRANTEE under this Flood Protection (Levee) Easement; reserving, however, to the GRANTOR all such rights and privileges in the EASEMENT AREA as may be used without interfering with the PROJECT or the use of the EASEMENT AREA or entry and access across the LAND TRUST PROPERTY for the PROJECT or otherwise abridging the rights and easement hereby acquired by GRANTEE; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

GRANTEE will exercise its rights under this easement with the least amount of disturbance to the LAND TRUST PROPERTY outside of the EASEMENT AREA as commercially reasonably practical given the purposes of and rights granted under this easement and will, to the fullest extent commercially reasonably practical, restore such portions of the LAND TRUST





**EXHIBIT A**  
**LEGAL DESCRIPTION OF LAND TRUST PROPERTY**

**EXHIBIT B**  
**LEGAL DESCRIPTION OF FLOOD PROTECTION (LEVEE) EASEMENT AREA**

**EXHIBIT C**  
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THIS FLOWAGE EASEMENT is made by the Friends of the Columbia Gorge Land Trust and its assigns (“GRANTOR”) and the Port of Camas-Washougal and its assigns (“GRANTEE”) of Clark County, Washington.

WHEREAS, the GRANTOR is the owner of real property located in Clark County, Washington, which is legally described in Exhibit A (the “LAND TRUST PROPERTY”); and,

WHEREAS, the GRANTEE is the holder of certain easements for flowage purposes affecting adjacent property and desires to hold a similar easement on the LAND TRUST PROPERTY to facilitate the flood protection levee authorized by the Flood Control Act 1950, House Document 531, Eighty-first Congress, 2nd session as amended by U.S. Army Corps of Engineers in Permit # \_\_\_\_\_ dated \_\_\_\_\_, 2018 and as may be otherwise amended from time to time (“Steigerwald Habitat Restoration and Flood Control Project” or “PROJECT”), which is partially located on the LAND TRUST PROPERTY.

**NOW THEREFORE**, for and in consideration of the sum of XX dollars (\$XX.00) and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, GRANTOR hereby grants and conveys to the GRANTEE the perpetual and assignable right, power, privilege and easement seasonally and/or permanently to overflow, flood and submerge that portion of the LAND TRUST PROPERTY legally described in Exhibit B and shown in Exhibit C (the “EASEMENT AREA”) in connection with the operation and maintenance of the PROJECT, and the continuing right to clear and remove debris and obstructions which, in the opinion of the GRANTEE, may be detrimental to the PROJECT, together with all right, title and interest in and to and the right to remove the structures and improvements situate in the EASEMENT AREA excepting \_\_\_\_\_, (*here identify those structures not designed for human habitation which the District Engineer determines may remain in the EASEMENT AREA*), and together with the right of access across the GRANTOR’s property to and from the EASEMENT AREA with all persons, vehicles, materials, and equipment to carry out the rights and purposes of GRANTEE under this easement; provided that no structures for human habitation shall be constructed or maintained in the EASEMENT AREA, that no other structures shall be constructed or maintained in the EASEMENT AREA except as may be approved in writing by GRANTEE in its sole and absolute discretion, and that no excavation shall be conducted and no landfill placed in the EASEMENT AREA without the prior written approval by GRANTEE in its sole and absolute discretion, including but not limited to the location and method of excavation and/or placement thereof. The above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; and subject to the reservation to the owners, their heirs and assigns, of all such rights and privileges





**EXHIBIT A**  
**LEGAL DESCRIPTION OF LAND TRUST PROPERTY**

**EXHIBIT B**  
**LEGAL DESCRIPTION OF FLOWAGE EASEMENT AREA**

**EXHIBIT C**  
**MAP OF FLOWAGE EASEMENT AREA**



**Attachment 4 – Sample Contract**  
**Steigerwald Habitat Restoration and Flood Control Project**



**CONTRACT**

**No. xx-20xx**

<b>CONTRACTOR<sup>1</sup> ("Contractor")</b>	<b>Lower Columbia Estuary Partnership ("Estuary Partnership")</b>
<p>Organization: Project Officer: Title: Address:  Phone:                Fax: E-mail: <b>Citizenship</b>, if applicable: Non-resident alien <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Business Designation</b> (check one):  <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Partnership  <input type="checkbox"/> Limited Liability Company  <input type="checkbox"/> Limited Liability Partnership  <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other</p> <p><b>Tax ID#</b> _____</p> <p><b>Certified Minority, Women or Emerging Small Business Firm?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes  <b>Number:</b> _____</p>	<p>Project Officer: Debrah Marriott            Title: Executive Director            Address: Lower Columbia Estuary Partnership                      811 SW Naito Parkway, Suite 410                      Portland, OR 97204            Phone: (503) 226-1565 x227 Fax: (503) 226-1580            E-mail: dmarriott@estuarypartnership.org</p> <p>Finance Manager: Tom Argent            Phone: (503) 226-1565 ext. 242</p>

This Contract is between the **Lower Columbia Estuary Partnership ("Estuary Partnership")**, an Oregon nonprofit corporation, and **[insert name] ("Contractor")**.

**TERMS & CONDITIONS**

- 1. Effective Date and Duration.** This Contract shall become effective on the date it has been signed by Estuary Partnership. Unless terminated or extended, this Contract shall expire when Estuary Partnership accepts Contractor's completed performance. Expiration or termination shall not extinguish or prejudice Estuary Partnership's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.
- 2. Statement of Work.** The Statement of Work (the "Work"), including the delivery schedule for such Work, is contained in Exhibit A. Contractor agrees to perform the Work in accordance with this Contract.
- 3. Contract Documents.** This Contract includes the attached Exhibits A through E, each of which is incorporated by this reference.

<sup>1</sup> Information in the Contractor Block must be provided prior to Contract approval. This information shall be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 or 1099-MISC for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to 31 percent backup withholding.

4. **Amendments.** No Term or Condition of this Contract, including the Work, shall be amended without review and written consent by Estuary Partnership. Such amendment shall be made through a formal written amendment, executed by both parties prior to the amendment being implemented.

There may be a one-time adjustment between budget categories of less than 10% of Project Total, set forth in Exhibit B, per contract period, provided that Estuary Partnership receives documentation of and approves in writing the change prior to the adjustment. For consideration, Contractor's written request for change or amendment must be received by Estuary Partnership at least thirty (30) calendar days before the task deliverable or final report is due as set forth in the Statement of Work.

**5. Payments and Consideration.**

- a) Estuary Partnership agrees to pay Contractor as stipulated in Exhibits A and B for accomplishing the Work.
- b) **Invoicing.** For review and approval by Estuary Partnership, Contractor shall submit an invoice not more often than monthly. It shall itemize and explain all expenses for which reimbursement is claimed pursuant to Exhibits A and B, including itemization of any cost share expended. Invoices must be submitted within 30 days after the completion of the work being billed. Invoices should be submitted not later than ten (10) days after the end of the month. Invoices submitted after the 10<sup>th</sup> of the month may not be processed until the subsequent month. Each invoice shall include:
- i. name, mailing address and phone number of Contractor
  - ii. Estuary Partnership contract number, invoice date and number
  - iii. performance period
  - iv. itemized expenses by task and budget line as prescribed in Exhibit A and Exhibit B for which funds are claimed including:
    1. rates (inclusive of salary, fringe, and other burdens) and identification of who performed the work: name, title, hours worked, and cost per hour (timesheets or logs are not required)
    2. travel: dates of travel, destination, reason for trip, total mileage and mileage rate, per diem costs
    3. direct expenses, such as equipment, supplies, printing, copying, including what was purchased, the quantity, and cost for how much (attach receipts)
  - v. itemization of cost share, if required and prescribed in Exhibit B and in accordance with Section 5, as applicable
  - vi. contract financial summary outlining the total amount of the approved contract budget, accumulative funds requested and the funds remaining in this Contract at the time the invoice is submitted

Contractor shall send invoices and all deliverables to the **Finance Manager, Lower Columbia River Estuary Partnership, 811 SW Naito Parkway, Suite 410, Portland, OR 97204**

- c) **Disbursement.** If Estuary Partnership finds the invoice documentation is in accordance with requirements of this Contract and if Estuary Partnership accepts the completed work, Estuary Partnership shall disburse the payment to Contractor within thirty (30) calendar days of acceptance. If Estuary Partnership determines that Contractor modified the Work without prior written approval or if the Work is otherwise unacceptable in Estuary Partnership's reasonable judgment, Estuary Partnership is not be obligated to disburse the payment. If Estuary Partnership elects not to disburse the payment, Estuary Partnership shall notify Contractor in writing of the reason for nonpayment. Estuary Partnership may allow Contractor a reasonable time to address Estuary Partnership's reason for nonpayment, and to resubmit a new invoice.
- d) **Excess or Untimely Invoices.** Contractor shall not submit invoices for, and Estuary Partnership shall not pay, any amount in excess of the Maximum Award defined in Exhibit A and B. If Estuary Partnership increases the Maximum Award by amendment, the amendment must be fully effective before Contractor performs work subject to the amendment. No payment shall be made for activities performed before the Begin Date or after the End Date, regardless of the relationship of the activity performed to this Contract.

- e) **Travel and Other Expenses.** Travel shall be allowed only when the travel is essential to the normal discharge of Estuary Partnership's responsibilities. Travel shall be conducted in the most efficient and cost-effective manner resulting in the best value, must be authorized as part of Exhibit A and B. The travel must comply with all the requirements set forth in this section. Personal expenses shall not be authorized at any time. All expenses are included in the Maximum Award. Contractor understands and agrees that travel expenses shall be reimbursed only in accordance with rates approved in advance by Estuary Partnership and in effect at the time the expense was incurred. Current travel reimbursement rates are attached in Exhibit C.
6. **Reports.** Contractor shall prepare and submit all interim progress reports and a final report in accordance with Statement of Work. Contractor agrees to use recycled paper for all reports prepared in accordance with the Statement of Work and to print documents on both sides of paper, unless otherwise stipulated.
7. **Publicity, Release of Information and Work Citation.** Contractor shall not hold press conferences, issue press releases, or otherwise make public statements regarding this Contract or the Work, release reports or make presentations without prior review and written approval from Estuary Partnership. Any such activities as approved by Estuary Partnership shall require the Contractor to indicate that the Work was made possible by Estuary Partnership.
8. **Termination for Convenience.** Estuary Partnership, in its sole discretion, may terminate this Contract, in whole or in part, upon 30 days' prior notice to Contractor.
9. **Termination for Cause – Estuary Partnership.** Estuary Partnership may terminate this Contract, in whole or in part, effective immediately upon notice to Contractor, or at such later date as Estuary Partnership may establish in such notice, upon the occurrence of any of the following events:
- a) **Funding.** Estuary Partnership fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient, in its sole judgment, to pay for Contractor's Work;
  - b) **Laws Modified.** Applicable laws, regulations or guidelines are modified or interpreted in such a way that either the Work is prohibited or of less value, or Estuary Partnership is prohibited from paying for such Work from the planned funding source;
  - c) **License.** Contractor no longer holds necessary license or certificate that is required to perform the Work; or
  - d) **Contractor Failure.** Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Terms & Conditions, fails to perform the Work within the time specified in the Statement of Work or any extension thereof, or fails to pursue the Work as to endanger Contractor's performance in accordance with the Statement of Work, and Contractor fails to address the breach or default within 10 days of notice, or such other time as specified by Estuary Partnership in such notice.
10. **Termination for Cause – Contractor.** The Contractor may terminate this Contract, in whole or in part, effective upon 60 days' prior written notice to Estuary Partnership if Estuary Partnership commits any material breach or default of any covenant, warranty, obligation or agreement under the terms and conditions of this Contract and Estuary Partnership fails to address the breach or default within 10 days of notice, or such longer time as specified by Contractor in such notice.
11. **Remedies.**
- a) **Contractor Remedies.** Contractor's sole and exclusive remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by Estuary Partnership pursuant to Section 5, less previous amounts paid and any claim(s) which Estuary Partnership has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall promptly pay any excess to Estuary Partnership upon demand.
  - b) **Estuary Partnership Remedies.** In the event of termination pursuant to Section 9, without limitation, Estuary Partnership 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 9, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 8.

- c) **Contractor's Tender Upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Estuary Partnership expressly directs otherwise in such notice of termination. Upon termination of this Contract or at the Estuary Partnership request, Contractor shall deliver to Estuary Partnership all documents, information, research, objects or other tangible components, works-in-progress and other property that are or would be deliverables had the Work been completed.
12. **Records.** Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Estuary Partnership and its duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor 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 three (3) years, or such longer period as may be required by applicable law, following final payment or other termination of this Contract, whichever date is later.
13. **Lobbying and Litigation.** Contractor agrees not to use this Contract to engage in lobbying the Federal Government or litigation against the United States.
14. **Relationship of Parties.** Contractor and Estuary Partnership acknowledge and understand that (i) neither Estuary Partnership nor Contractor is the agent or partner of the other; (ii) this Contract shall not be construed as creating a joint venture between Estuary Partnership and Contractor; (iii) neither Estuary Partnership nor Contractor shall be responsible for the debts or obligations of the other; and (iv) neither Estuary Partnership nor Contractor has the authority to bind or act on behalf of the other.
15. **Indemnity.** Contractor shall defend, hold harmless, and indemnify Estuary Partnership and its officers, directors, members, employees, agents, and other representatives from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses arising out of the acts of the Contractor and its officers, employees, contractors, agents, or other representatives in performing the Exhibit A Work. With respect to any of Contractor's professional services rendered in performing the Exhibit A work, these Section 15 Indemnity provisions shall apply only to the negligent acts of the Contractor and its officers, employees, contractors, agents, or other representatives.
16. **Confidentiality and Proprietary Information.** Contractor shall use "Confidential Information," as defined herein, only to perform the Work. Contractor, its employees and agents, shall not in any manner disclose Confidential Information except for the sharing of such information with its employees or agents (a) who require such information in conjunction with the performance of the Work (b) who agree in writing to be bound by the restrictions of this Section, and (c) for whose conduct Contractor shall be strictly responsible. Contractor shall maintain all Confidential Information in strict confidence and shall take all reasonable precautions to ensure that Confidential Information is not willfully or inadvertently disclosed by it or any of its employees or agents in a manner contrary to this Agreement. In no event shall Contractor or any of its employees or agents use any of the Confidential Information for personal benefit, to the detriment of the Estuary Partnership, to aid in the business of any rival concern or entity or for any purpose other than performing the Work. Notwithstanding the foregoing, Contractor may disclose Confidential Information to a governmental agency or regulatory body to the extent that disclosure is required by law, court order, or subpoena, provided that Contractor shall notify Estuary Partnership promptly after Contractor is notified that disclosure is required.

"Confidential Information" is all of Estuary Partnership's business and operational plans; budgets; grant writing, grant application strategies and the results of research about funding sources; work plans and papers;

work products; funding sources; contacts; specifications; strategies; methodologies; techniques; financial statements and projections; information that Estuary Partnership is legally or contractually obligated to keep confidential; and any other information that Estuary Partnership, in its reasonable discretion, considers to be confidential, proprietary or sensitive; in all instances regardless of whether such information is disclosed orally or in written or electronic form or is derived or prepared by Contractor.<sup>2</sup>

17. **Attorney Fees.** With respect to any dispute relating to this Contract, or in the event that a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.
18. **Governing Law.** This Contract is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding relating to this Contract (collectively, a "Claim") 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. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
19. **Independent Contractor; Responsibility for Taxes and Withholding**
  - a) Contractor shall perform all required Work as an independent contractor. Although Estuary Partnership reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed, and (ii) to evaluate the quality of the completed performance, Estuary Partnership cannot and shall not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
  - b) Contractor shall be responsible for all federal, state or other taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Estuary Partnership shall not withhold from such compensation or payments any amount(s) to cover Contractor's federal, state or other tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.
20. **Subcontracts and Assignment; Successors and Assigns.** Except as described and approved in Exhibits A and B, Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract, without Estuary Partnership's prior written consent, which consent may be withheld in Estuary Partnership's sole discretion. In addition to any other provisions Estuary Partnership may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by the terms of this Contract as if the subcontractor were the Contractor. Estuary Partnership's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
21. **No Third Party Beneficiaries.** Estuary Partnership and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this 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

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<sup>2</sup> *Ownership of work product is addressed in Exhibit A. To the extent Contractor co-owns work product, the rights and obligations set forth in this Section shall be interpreted to be consistent with such co-ownership.*

unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

22. **No Warranty by Estuary Partnership; Disclaimer.** Any information provided by Estuary Partnership is provided As-Is, Where-Is, without representation or warranty of any kind. WITHOUT LIMITATION, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND THE IMPLIED WARRANTY OF MERCHANTABILITY ARE DISCLAIMED.
23. **Merger Clause; Waiver.** This Contract 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 Contract. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties. 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 Estuary Partnership to enforce any provision of this Contract shall not constitute a waiver by Estuary Partnership of that or any other provision.
24. **Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, e-mail, facsimile, or mailing the same, postage prepaid, to Contractor or Estuary Partnership at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 24. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Estuary Partnership, such facsimile transmission must be confirmed by telephone notice to Estuary Partnership's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
25. **Severability.** The parties agree that if any term or provision of this 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 this Contract did not contain the particular term or provision held to be invalid.
26. **Counterparts.** This 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 this Contract so executed shall constitute an original.

**Certification:** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown at the top of this form is Contractor's correct taxpayer identification; (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; (c) Contractor is a U.S. person (including a U.S. resident alien); (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the above Contractor data is true and accurate.

**CONTRACTOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ESTUARY PARTNERSHIP**

By: \_\_\_\_\_

Title: Executive Director

Date: \_\_\_\_\_

**Exhibit A**  
**STATEMENT OF WORK, BUDGET NARRATIVE AND DELIVERABLES**

**CONTRACTOR: XXXXXX**

**CONTRACT #**

**PRINCIPAL PROJECT MANAGER: XXXXXXXX**

Begin: On the date this Contract is fully executed and approved by all parties.

**In addition to Deliverables outlined by Task, other Deliverables include:**

1. Quarterly progress reports, including summary of work and cost-share to date, are due xxxx x, 20xx, xxxx x, 20xx. xxxx x, 20xx, and xxxx x, 20xx.
2. Final documentation, including summary of work and project cost-share, is due xxxxx x, 20xx.

**End:** When Contractor's completed performance has been accepted by Estuary Partnership **or** on **xxxxx, 20xx**, whichever is sooner.

**PROJECT TITLE: XXXXXXXXX**

**PROJECT DESCRIPTION**

**PROJECT TOTAL**

**\$XX,XXX**

**COST SHARE REQUIRED**

Yes, please provide detail in Exhibit A: Task Description and Exhibit B: Budget Detail  None Required

**Allowable Sources of Cost Share, if required above.**

Federal  Non-Federal

**Source of Estuary Partnership Funds**

Federal  State  Private  Other

If federal funds are the source of Estuary Partnership funds or the source of required cost share, then procurement processes must meet Federal Contracting Rules, defined in Exhibit E.

**OWNERSHIP OF WORK PRODUCT**

The indicated provision applies to ownership of the work product resulting from this Contract:

- All of the Work product/deliverable of Contractor, its employees, agents and contractors that results from this Contract is the exclusive property of Estuary Partnership and Estuary Partnership is deemed the author and as such protected by the copyright law. As such, the Work in whole in or in part may not be reproduced without the expressed written consent of Estuary Partnership and must be cited using generally accepted citation standards. Contractor, its employees, agents and contractors, forever waive any and all rights relating to the Work, 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. The Contractor may upon written approval of Estuary Partnership use the scientific data, conclusions and recommendations of the Work product(s) pursuant to this Contract for noncommercial educational purposes, including publishing scientific papers. Estuary Partnership must receive recognition in writing as described in Section 7 above for such use or publication; written citation shall follow generally accepted citation standards.
- The work product/deliverable of Contractor, its employees, agents and contractors that results from this Contract is the result of shared funding and consequently Estuary Partnership and Contractor shall co-own the

work product. Each party is considered a co-author and as such be protected by the copyright law. As such, the Work in whole in or in part may not be reproduced without using generally accepted citation standards.

Ownership clause does not apply.

**Task 1. xxxxxxxx**

**Description:** xxxxxx

**Budget:** Task total is \$xx,xxx. **\$xx,xxx Estuary Partnership** + \$x,xxx cost-share

**Schedule:** Completed by xxxxx, 200x

**Work Product/Deliverables:** xxxxxxxx

**Work Product/Deliverables Due:** xxx, 200x

**Task 2. xxxxxxxx**

**Description:** xxxxxx

**Budget:** Task total is \$xx,xxx. **\$xx,xxx Estuary Partnership** + \$x,xxx cost-share

**Schedule:** Completed by xxxxx, 200x

**Work Product/Deliverables:** xxxxxxxx

**Work Product/Deliverables Due:** xxx, 200x

**Task 3. xxxxxxxx**

**Description:** xxxxxx

**Budget:** Task total is \$xx,xxx. **\$xx,xxx Estuary Partnership** + \$x,xxx cost-share

**Schedule:** Completed by xxxxx, 200x

**Work Product/Deliverables:** xxxxxxxx

**Work Product/Deliverables Due:** xxx, 200x



## **Exhibit C**

### **TRAVEL REIMBURSEMENT RATES**

For purposes of this Contract, Estuary Partnership adheres to the following rates for travel, meals and lodging.

**Mileage.** Mileage for travel in a private automobile, while Contractor is acting within the course and scope of his/her duties under this Contract and driving over the most direct and usually traveled route, shall be reimbursed at the prevailing Estuary Partnership rate which is the federal prevailing rate. To qualify for mileage reimbursement, Contractor must hold a valid, current driver's license for the class of vehicle to be driven and carry personal automobile liability insurance in amounts not less than those required by (i) the Oregon Financial Responsibility Law (ORS 806.060) or (ii) the jurisdiction in which the vehicle is being operated, whichever is greater. **No mileage reimbursement shall be paid for the use of motorcycles or mopeds.**

**Meals.** Current per diem rates are \$12.00 breakfast; \$14.00 lunch; and \$26.00 dinner per day. Except in the event of necessary overnight travel as provided below, breakfast and dinner expenses shall be reimbursed only if Contractor, while acting within the course and scope of his/her duties under this Contract, is required to travel more than two (2) hours: (a) beginning before 6:00 am (for breakfast expense reimbursement), or (b) ending after 7:00 pm (for dinner expense reimbursement). Lunch expense is reimbursable only if Contractor, while acting within the course and scope of his/her duties under this Contract, is required to travel overnight and begins or ends the journey, respectively, before or after 11:00 a.m. Breakfast and dinner expenses are reimbursable during Contractor's necessary overnight travel while acting within the course and scope of his/her duties under this Contract.

**Lodging.** Estuary Partnership shall reimburse Contractor for actual cost of lodging up to \$120.00, excluding local taxes. Exemptions to this limitation must be approved by the Estuary Partnership in advance of incurrence. Reimbursement rates for lodging are not considered "per diem" and receipts are required for reimbursement.

**Other Travel Expenses.** In addition to meals and lodging, travel expenses shall be reimbursed for airfare and rental vehicles only if Contractor is acting within the course and scope of his/her duties under this Contract. Receipts are required for all out-of-state travel expenses except meals and other incidental expenditures of less than \$25.00 per item. Incidental items included but are not limited to: parking, highway tolls, taxi cabs, and transit fares. Such items must be itemized for reimbursement. All Estuary Partnership representatives shall fly "coach class," unless Contractor pays the difference. Airfare must be the lowest fare available at the time the travel arrangements are made. Estuary Partnership encourages travel by mass transit where practicable.

## Exhibit D INSURANCE

During the term of this Contract, Contractor shall maintain at its own expense each insurance noted below marked with an "X":

1.  **Required by Estuary Partnership of contractors with one or more workers, as defined by ORS 656.027.**

**Workers' Compensation** insurance in compliance with applicable state law. Estuary Partnership shall not assume workers' compensation coverage for contract employees, and CONTRACTOR AGREES TO INDEMNIFY AND DEFEND ESTUARY PARTNERSHIP FROM AND AGAINST CLAIMS, LOSSES, OR LIABILITY OF ANY GOVERNMENT ARISING FROM OR RELATED TO CONTRACTOR'S FAILURE TO PROVIDE SUCH INSURANCE COVERAGE.

2.  **Required by Estuary Partnership**  **Not required by Estuary Partnership.**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than  \$200,000,  \$500,000,  \$1,000,000, or  \$2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

3.  **Required by Estuary Partnership**  **Not required by Estuary Partnership.**

**General Liability** insurance with a combined single limit, or the equivalent, of not less than  \$200,000,  \$500,000,  \$1,000,000, or  \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide that Estuary Partnership officers and employees are Additional Insureds but only with respect to the Contractor's services to be provided under this Contract.

4.  **Required by Estuary Partnership**  **Not required by Estuary Partnership.**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than  Oregon Financial Responsibility Law (ORS 806.060),  \$200,000,  \$500,000, or  \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5.  **Government Agency – Self Insurance Permitted**

6. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Contractor or its insurer(s) to Estuary Partnership.

7. **Proof of Insurance.** As evidence of the insurance coverages required by this Contract, Estuary Partnership may require the Contractor furnish acceptable insurance certificates to Estuary Partnership prior to commencing the work. The certificate shall specify all of the parties who are Additional Insureds. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

## **Exhibit E**

### **COMPLIANCE WITH FEDERAL CONTRACTING RULES**

Compliance with Federal Law and Contracting Rules.

**Contracts whose funding is identified in Exhibit A of Contract as federal must comply with each provision below.**

**Payment.** Estuary Partnership shall disburse funds in accordance with the terms and conditions of this Contract and the cost principles of OMB Circular A-122 (Non-Profit Organizations), as applicable.

**Compliance with Laws.** Contractor shall comply with all other local, state, and federal laws, rules, regulations, and guidelines to which it or this Contract may be subject (the "Laws"), including but not limited to the applicable provisions of 40 CFR Chapter 1, Subchapter B, applicable Office of Management and Budget ("OMB") circulars. The inclusion of any specific legal requirements under any of the Laws in these Terms & Conditions does not relieve the Contractor of any of its other obligations under any of the Laws. Contractor further agrees to keep current on any changes in any of the Laws.

**Property.** Contractor agrees to comply with all applicable provisions of OMB Circular A-110 relating to property, equipment, and supplies acquired with this Contract. Contractor is subject to all provisions of OMB Circular A-110 relating to intangible property rights, including but not limited to, the provision relating to the reservation by the EPA of a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use any copyrighted work produced by this Contract for federal purposes, and to authorize others to do so.

**Procurement Responsibilities.** Contractor agrees to comply with the procurement requirements mandated by the EPA in its Cooperative Agreement with Estuary Partnership, and the procurement procedures listed in OMB Circular A-110. Contractor shall ensure that the applicable contract provisions listed in Appendix A of OMB Circular A-110 are included in any contract awarded by Contractor.

## Exhibit F

### CONTRACT CLAUSES REQUIRED BY BONNEVILLE POWER ADMINISTRATION

Funding for the Work specified in this Contract is provided in whole or in part under an agreement between the Estuary Partnership and the Bonneville Power Administration (BPA). That agreement requires the Estuary Partnership to incorporate the following provisions in contracts funded pursuant to the Estuary Partnership-BPA agreement. Contractor understands and agrees that it is bound by these additional provisions, including any requirement that it incorporate these same provisions in subcontracts into which it enters in carrying out this Work.

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#### ORGANIZATIONAL CONFLICTS OF INTEREST

- (a) The contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts which could give rise to organizational conflicts of interest, as defined in BPI 3.4.1, and that the contractor has disclosed all relevant information to the Estuary Partnership Contracting Officer.
- (b) The contractor agrees that, if after award, an organizational conflict of interest with respect to this contract is discovered, an immediate and full disclosure in writing shall be made to the Estuary Partnership Contracting Officer which shall include a description of the action which the contractor has taken, or proposes to take, to avoid or mitigate such conflicts.
- (c) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the Estuary Partnership Contracting Officer, the Estuary Partnership may terminate the contract for default.
- (d) The provisions of this clause shall be included in all subcontracts for work to be performed in aid of the services provided by the prime contractor, and the terms "contract," "contractor," "Contracting Officer" modified appropriately.

#### CERTIFICATION, DISCLOSURE, AND LIMITATION REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

- (a) As used in this clause:

"Covered Federal action" means:

- (1) The awarding of any Federal contract.
- (2) The extension, continuation, renewal, amendment, or modification of any Federal contract.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and includes Alaskan Natives.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, includes a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:
  - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract or the extension, continuation, renewal, amendment, or modification of any Federal contract.
  - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, Standard Form-LLL, Disclosure of Lobbying Activities, to the Contracting Officer.
  - (3) He or she will include the language of this certification in all subcontract awards at any tier and that all sub-recipients of subcontract awards in excess of \$150,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10, 000 and not more than \$100,000 for each such failure.
- (d) A contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under this clause if paid for with appropriated funds.
- (e) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (b) of this clause. An event that materially affects the accuracy of the information reported includes--
  - (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (f) The contractor shall require the submittal of a certification, and if required, a disclosure form, by any person who requests or receives any subcontract exceeding \$150,000 under the Federal contract.
- (g) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- (h) Any person who makes an expenditure prohibited under this clause or who fails to file or amend the disclosure form to be filed or amended by this clause shall be subject to a civil penalty as provided by 31 U. S. Code 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

## **RESTRICTION ON CERTAIN FOREIGN PURCHASES**

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive Order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

## **EQUAL OPPORTUNITY**

- (a) Definition. "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- (b)
  - (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
  - (2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).
- (c)
  - (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
  - (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to –
    - (i) Employment;
    - (ii) Upgrading;
    - (iii) Demotion;
    - (iv) Transfer;
    - (v) Recruitment or recruitment advertising;
    - (vi) Layoff or termination;
    - (vii) Rates of pay or other forms of compensation; and
    - (viii) Selection for training, including apprenticeship.
  - (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
  - (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  - (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
  - (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
  - (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the (OFCCP) for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
  - (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
  - (10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
  - (11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

#### **NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT**

- (a) During the term of this contract, the contractor agrees to post a notice, of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically. The notice shall include the information contained in the notice published by the Secretary of Labor in the Federal Register (Secretary's Notice).
- (b) The contractor will comply with all provisions of the Secretary's Notice, and related rules, regulations, and orders of the Secretary of Labor.
- (c) In the event that the contractor does not comply with any of the requirements set forth in paragraphs (a) or (b) above, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for future Government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order 13496. Such other sanctions or remedies may be imposed as are provided in Executive Order 13496, or by rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.
- (d) The contractor will include the provisions of paragraphs (a) through (c) above in every subcontract entered into in connection with this contract (unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009), so that such provision will be binding upon each subcontractor. The contractor will take such action with respect to any such contract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance: Provided, however, that if the contractor becomes involved in litigation with a subcontractor, or is threatened with

such involvement, as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **MINIMUM WAGE FOR FEDERAL CONTRACTS**

This clause implements Executive Order 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and OMB Policy Memorandum M-14-09, dated June 12, 2014.

- (a) Each service employee, laborer, or mechanic employed in the United States (the 50 States and the District of Columbia) in the performance of this contract by the prime Contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the Contractor and service employee, laborer, or mechanic, shall be paid not less than the applicable minimum wage under Executive Order 13658. The minimum wage required to be paid to each service employee, laborer, or mechanic performing work on this contract between January 1, 2015, and December 31, 2015, shall be \$10.10 per hour.
- (b) The Contractor shall adjust the minimum wage paid under this contract each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all service employees, laborers, or mechanics subject to the Executive Order beginning January 1 of the following year. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on [www.wdol.gov](http://www.wdol.gov) (or any successor website). The applicable published minimum wage is incorporated by reference into this contract.
- (c) The Contracting Officer will adjust the contract price or contract unit price under this clause only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Contracting Officer shall consider documentation as to the specific costs and workers impacted in determining the amount of the adjustment.
- (d) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (c) of this clause, and will not provide price adjustments under this clause that result in duplicate price adjustments with the respective clause of this contract implementing the Service Contract Labor Standards statute (formerly known as the Service Contract Act) or the Wage Rate Requirements (Construction) statute (formerly known as the Davis Bacon Act).
- (e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

#### **CONTRACTOR SAFETY AND HEALTH**

- a) The Contractor shall furnish a place of employment that is free from recognized hazards that cause or have the potential to cause death or serious physical harm to employees; and shall comply with occupational safety and health standards promulgated under the Occupational Safety and Health Act of 1970 (Public Law 91-598). Contractor employees shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to their own actions and conduct.
  - (1) All construction contractors working on contracts in excess of \$100,000 shall comply with Department of Labor Contract Work Hours and Safety Standards (40 U.S.C. § 3701 et seq.).
  - (2) The Contractor shall comply with
    - (i) National Fire Protection Association (NFPA) National Fire Codes for fire prevention and protection applicable to the work or facility being occupied or constructed;
    - (ii) NFPA 70E, *Standard for Electrical Safety in the Workplace*;
    - (iii) American Conference of Governmental Industrial Hygiene *Threshold Limit Values for Chemical Substances and Physical Agents* and Biological Exposure Indices; and,
    - (iv) Any additional safety and health measures identified by the Contracting Officer.

This clause does not relieve the Contractor from complying with any additional specific or corporate safety and health requirements that it determines to be necessary to protect the safety and health of employees.

- (b) The Contractor bears sole responsibility for ensuring that all contractor's workers performing contract work possess the necessary knowledge and skills to perform the work correctly and safely. The Contractor shall make any training and certification records necessary to demonstrate compliance with this requirement available for review upon request by the Estuary Partnership or BPA.
- (c) The Contractor shall hold the Estuary Partnership, BPA, and any other owners of the site of work harmless from any and all suits, actions, and claims for injuries to or death of persons arising from any act or omission of the Contractor, its subcontractors, or any employee of the Contractor or subcontractors, in any way related to the work under this contract.
- (d) The Contractor shall immediately notify the Estuary Partnership Contracting Officer or her/his designee, by telephone at (503) 226-1565 of any death, injury, occupational disease or near miss arising from or incident to performance of work under this contract.
  - (1) The Estuary Partnership business hours are 8:00 a.m. to 5:00 p.m. Pacific Time. If Estuary Partnership officials are not available to take the phone call, the Contractor shall leave a voice-mail message that includes the details of the event and the Contractor's contact information. The Contractor shall periodically repeat the phone call to the Estuary Partnership until the Contractor is able to speak directly with an Estuary Partnership official.
  - (2) The Contractor shall follow up each phone call notification with an e-mail message to both [dmarriott@estuarypartnership.org](mailto:dmarriott@estuarypartnership.org) and [targent@estuarypartnership.org](mailto:targent@estuarypartnership.org) immediately for any fatality or within 24 hours for non-fatal events.
  - (3) The Contractor shall complete BPA form 6410.15e Contractor's Report of Personal Injury, Illness, or Property Damage Accident and submit the form to the Estuary Partnership within five (5) working days of such an occurrence. The Contractor shall include photographs and witness statements with the report.
  - (4) In the case of a near-miss Incident that does not involve injury, illness, or property damage, the Contractor shall complete BPA Form 6410.18e Contractor's Report of Incident/Near Miss and submit the form to the Estuary Partnership within five (5) working days of such an occurrence. The Contractor shall include photographs and witness statements with the report.
- (e) Notification of Imminent Danger and Workers Right to Decline Work
  - (1) All workers, including contractors and BPA employees, are responsible for identifying and notifying other workers in the affected area of imminent danger at the site of work. Imminent danger is any condition or practice that poses a danger that could reasonably be expected to cause death or severe physical hardship before the imminence of such danger could be eliminated through normal procedures.
  - (2) A contract worker has the right to ask, without reprisal, their onsite management and other workers to review safe work procedures and consider other alternatives before proceeding with a work procedure. Reprisal means any action taken against an employee in response to, or in revenge for, the employee having raised, in good faith, reasonable concerns about a safety and health aspect of the work required by the contract.
  - (3) A contract worker has the right to decline to perform tasks, without reprisal, that will endanger the safety and health of her- or himself or of other workers.
  - (4) The Contractor shall establish procedures that allow workers to cease or decline work that may threaten the safety and health of the worker or other workers.
- (f) The Estuary Partnership and BPA encourage all contractor workers to raise safety and health concerns as a way to identify and control safety hazards. The Contractor shall develop and communicate a formal procedure for submittal, resolution, and communication of resolution and corrective action to the worker submitting the concern. The procedure shall:
  - (1) encourage workers to identify safety and health concerns directly to their supervisor and employer using the employer's reporting process; and
  - (2) inform workers that they may raise safety concerns to the Estuary Partnership or the State OSHA. Workers may notify the Estuary Partnership at (503) 226-1565 if the employer's work process does not resolve the worker's safety and health concern. The Estuary Partnership and/or BPA may coordinate the response to a contractor worker's health and safety concerns with the State OSHA when necessary to facilitate resolution.
- (g) The Estuary Partnership may direct the contractor to stop a work activity due to safety and health concerns. The Estuary Partnership shall notify the Contractor orally, with subsequent written confirmation, and request immediate

initiation of corrective action. After receipt of the notice the Contractor shall immediately take corrective action to eliminate or mitigate the safety and health concern. When an Estuary Partnership employee stops a work activity due to a safety and health concern, the Contractor shall immediately notify the Estuary Partnership Contracting Officer, provide a description of the event, and identify the Estuary Partnership employee that halted the work activity. The Contractor shall not resume the stopped work activity until authorization to resume work is issued by an Estuary Partnership Official. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule when the Estuary Partnership stops a work activity due to safety and health concerns that occurred under the Contractor's control.

- (h) The Contractor shall keep a record of total monthly labor hours worked at the site of work. The Contractor shall include a separate calculation of the monthly total labor hours for each subcontractor in the contractor's monthly data. Upon request by the Estuary Partnership or BPA, the Contractor shall provide the total labor hours for a completed month no later than the 15th calendar day of the following month. The requestor shall identify the required reporting format and procedures.
- (i) The Contractor shall include this clause, including paragraph (i) in subcontracts. The Contractor may make appropriate changes in the designation of the parties to reflect the prime contractor—subcontractor arrangement. The Contractor is responsible for enforcing subcontractor compliance with this clause.

### **COMBATING TRAFFICKING IN PERSONS**

- (a) Definitions. As used in this clause:

"Coercion" means:

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

"Forced labor" means knowingly providing or obtaining the labor or services of a person:

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of:

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

"Severe forms of trafficking in persons" means:

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

- (b) Policy. The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not:
- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
  - (2) Procure commercial sex acts during the period of performance of the contract; or
  - (3) Use forced labor in the performance of the contract.
- (c) Contractor requirements. The Contractor shall:
- (1) Notify its employees of:
    - (i) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and
    - (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
  - (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.
- (d) Notification. The Contractor shall inform the Contracting Officer immediately of:
- (1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
  - (2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.
- (e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in:
- (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
  - (2) Requiring the Contractor to terminate a subcontract;
  - (3) Suspension of contract payments;
  - (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
  - (5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
  - (6) Suspension or debarment.
- (f) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.
- (g) Mitigating Factor. The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

## **EMPLOYMENT ELIGIBILITY VERIFICATION**

- (a) E-Verify enrollment and verification requirements.
- (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at the time of the contract award, the Contractor shall:
    - (A) *Enroll*. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;
    - (B) *Verify all new employees*. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (a) (3) of this section); and
    - (C) *Verify employees assigned to the contract*. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (a)(4) of this section).
  - (2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—
    - (A) All new employees.

- (i) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (a)(3) of this section); or
- (ii) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph)(3) of this section ); or
- (B) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (4) of this section).
- (3) If the Contractor is an institution of higher education but not subject to an intergovernmental contract; or a surety performing under a takeover agreement entered into pursuant to a performance bond performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (a)(1) or (a)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.
- (4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—
  - (A) Enrollment in the E-Verify program; or
  - (B) Notification to E-Verify Operations of the Contractor’s decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).
- (5) The Contractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.
  - (A) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor’s MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor shall be referred to a suspension or debarment official.
  - (B) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.
- (b) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.
- (c) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—
  - (1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;
  - (2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or
  - (3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.
- (d) *Subcontracts.* The contractor shall include the requirements of this clause, including this paragraph (d) (appropriately modified for identification of the parties), in each subcontract that—
  - (1) Is for:
    - (A) Services other than commercial services that are part of the purchase of a commercial-off-the-shelf (COTS) item, performed by the COTS provider and are normally provided for that COTS item;
    - (B) Construction.
  - (2) Has a value of more than \$3,000; and
  - (3) Includes work performed in the United States.

## **CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING**

(a) Definitions. As used in this clause—

“Driving”—(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. (2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while driving, dated October 1, 2009.

(c) The Contractor should adopt and enforce policies that ban text messaging while driving —(1) Company-owned or -rented vehicles or Government-owned vehicles; or (2) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$10,000.

## **AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES**

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as --

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

(1) The Contractor agrees to post employment notices stating --

(i) The Contractor’s obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may

lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

#### **SUBCONTRACTING WITH DEBARRED OR SUSPENDED ENTITIES**

- (a) "Commercially available off-the-shelf (COTS) item," as used in this clause means any item of supply (including construction material) that is:
  - (1) A commercial item (as defined in BPI 1.8);
  - (2) Sold in substantial quantities in the commercial marketplace; and
  - (3) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.
- (b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, by any executive agency unless there is a compelling reason to do so.
- (c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended by the Federal Government.
- (d) The Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended (see [www.sam.gov](http://www.sam.gov)).
- (e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that exceed \$30,000 in value and is not a subcontract for commercially available off-the-shelf items.