



Steigerwald Floodplain Restoration Project – Construction Management Services Request for Qualifications

Deadline – Notice of Intent to Submit: 4:00 PM, May 16, 2019

Deadline – SOQ Submittal: 4:00 PM, June 6, 2019

INTRODUCTION

The Lower Columbia Estuary Partnership (Estuary Partnership) is soliciting Statements of Qualifications (SOQs) from firms seeking to provide construction phase services during implementation of the Steigerwald Floodplain Restoration Project (Steigerwald Project). The Estuary Partnership will use these SOQs, along with follow-up interviews with short-listed firms, to select a firm to assist the Estuary Partnership and its project team with construction phase services. The primary intent of this solicitation is to identify and contract an Owner's Project Representative (OPR) to manage construction oversight of the Steigerwald Project.

The Estuary Partnership will work with the selected firm to develop a scope, schedule, and budget and enter into a contract for construction phase services (Attachment A provides a sample Estuary Partnership contract). The Estuary Partnership anticipates the budget for this effort will be approximately \$450,000 to \$500,000, and that work will be completed between August 2019 and October 2022, with the vast majority of work occurring during two construction seasons: June-October 2020 and April-November 2021.

PROJECT DESCRIPTION

Over the past six years, the Estuary Partnership, Port of Camas-Washougal (Port), U.S. Fish and Wildlife Service (USFWS), Washington State Department of Transportation (WSDOT), Bonneville Power Administration (BPA), Burlington Northern Santa Fe Railroad (BNSF), City of Washougal (City), and other public and private partners have coordinated to develop the Steigerwald Project. The purpose of the Steigerwald Project is threefold: (1) to restore floodplain processes and hydrologic connectivity between Gibbons Creek, the Columbia River, and adjacent floodplain habitats within the Steigerwald Lake National Wildlife Refuge (Refuge); (2) to reduce internal flooding and operations costs associated with Gibbons Creek flooding; and, (3) to improve recreation opportunities at an urban wildlife refuge visited by as many as 90,000 people per year. To accomplish these objectives, the Steigerwald Project would implement the following primary actions:

- (1) remove 11,600 linear feet of the Port's levee system;
- (2) construct two setback levee segments (totaling 7,800 linear feet of earthen levee and 900 linear feet of concrete flood wall);
- (3) elevate 1,600 linear feet of State Route 14 (maximum of three vertical feet);
- (4) remove a diversion structure, elevated canal, fish ladder, maintenance road, and several culverts and water control structures from within the floodplain;
- (5) construct new floodplain channels;
- (6) place approximately 1,400 pieces of large woody debris;
- (7) construct 13,800 linear feet of trail infrastructure, including three new bridges; and,
- (8) relocate the Refuge's existing parking lot and associated infrastructure.

The engineer's final cost estimate for construction of the Steigerwald Project will be provided during construction procurement; however, the project's Environmental Assessment provided a preliminary estimate of up to \$19,000,000.

Attachment B provides an overview of the project design at the concept level. The Steigerwald Project's final design plan set and project summary report may be downloaded for reference at the following link: <https://w2r.egnyte.com/fl/SpaL7czPBt>. BPA's Environmental Assessment for the project can be accessed here: https://www.bpa.gov/efw/Analysis/NEPADocuments/nepa/Steigerwald_Floodplain_Restoration/Steigerwald%20Final%20EA_01_07_2018.pdf.

PROJECT SCHEDULE

The Steigerwald Project is scheduled for implementation during 2020-2022, following the preliminary schedule outlined below and on sheet G1.5 of the final design plan set.

- **2019: Procurement**
 - Pre-qualify construction contract bidders (Sept/Oct)
 - Release bid documents, identify successful bidder, contracting (Nov 2019 – Jan 2020)
- **2020 (June-Oct.): Year 1 Construction**

Goal: Complete work within, north of, and in the general vicinity of State Route 14 right-of-way and construct levee test fills.

 - Remove existing parking lot
 - Construct three levee test fills (note: these fill areas are not near State Route 14)
 - Construct the portion of Gibbons Creek located north of State Route 14
 - Construct flood wall and closure structure
 - Construct engineered berm and bridge on private property located along Gibbons Creek
 - Raise, stripe, and pave State Route 14
 - Select tree removal from west levee footprint
- **2021 (April-Nov.): Year 2 Construction**

Goal: Complete work to the south of State Route 14; setback levees must be completed by Nov. 1.

 - Construct portions of setback levees located south of State Route 14
 - Construct expanded habitat/borrow areas and floodplain channels
 - Remove diversion structure, elevated canal, fish ladder, water control structures, culvert, and maintenance road
 - Construct trails and bridges (2) and reinstall USFWS interpretive facilities
 - Revegetate site
- **2022 – Year 3 Construction**
 - Survey crest elevation of setback levees
 - Place fill to raise crest elevation to minimum grade, as necessary

PROJECT PARTNERS

A large and diverse stakeholder group partnered to develop the Steigerwald Project and will be involved in its implementation. The Estuary Partnership is responsible for project construction and will administer the construction contract. The Port owns and operates the Washougal Flood Damage Reduction (FDR) levee system, which is regulated by the U.S. Army Corps of Engineers (USACE), and will continue in that role after construction is complete. The project is funded by BPA, Washington Department of Ecology, USFWS, and the Federal Highway Administration. The Estuary Partnership and BPA have secured all regulatory approvals required to implement the Steigerwald Project, except the USACE Section 404 and Section 408 approvals, which are in their final stages of review.

The project is located primarily on the Refuge, which is owned and managed by USFWS; however, significant project elements also are located on land owned by the Port, City, WSDOT, BNSF, and three private landowners. The Estuary Partnership, Port, and USFWS are partnering to secure the required real estate interests (levee and flowage easements), which will be acquired prior to project construction.

The Steigerwald Project's design team is led by Wolf Water Resources. The geotechnical and civil/transportation engineers are Cornforth Consultants and KPFF. Laura Herbron will serve as the landscape architect.

MINIMUM QUALIFICATIONS AND SELECTION PROCESS

The minimum qualifications applicants should have for this RFQ are:

- Experience with procurement for large, complex construction projects, including pre-qualifying bidders;
- Experience managing construction oversight of large, complex projects involving levees, transportation infrastructure, and sensitive habitats that support federally-listed species;
- Experience managing oversight of projects involving WSDOT and railroad rules, regulations, and requirements; and,
- Experience in construction contract management, including construction plan review, schedule review and monitoring, processing Requests-for-Information (RFIs) and submittals, progress payments, change order administration, claims analysis and negotiation, and inspection.

All applicants must designate and commit one individual to serve as the OPR. The applicant must commit 100% of that individual's time to the Steigerwald Project during the 2020 (Year 1) and 2021 (Year 2) construction seasons identified in the Project Schedule section of this RFQ. During that time, the OPR will be responsible for observing construction, monitoring contractor progress, document processing and management (including RFIs), coordinating the engineering team and Estuary Partnership field staff, and other activities generally as outlined in Attachment C. That individual also must be reasonably available to assist with procurement during 2019.

The Estuary Partnership will base the selection decision on the following criteria and scoring:

- qualifications and experience of the designated OPR, especially project experience involving large-scale earthwork, WSDOT infrastructure, and in-water/wetland restoration (50 points);
- cost, primarily the billing rate and anticipated travel costs for the designated OPR, with preference given to local OPR (20 points);
- qualifications and experience of other support staff (15 points);
- the applicant's commitment to diversity, equity, and inclusion, as evidenced through the applicant's diversity in demographics, as well as efforts the applicant has made to ensure a diverse workforce, including policies and practices to promote both diversity in hiring and partnering with women and minority owned firms (10 points); and,
- applicant's thoroughness in preparing their application (5 points).

The Estuary Partnership will evaluate SOQ submittals using the above scoring framework to identify approximately three firms to bring in for interviews. The Estuary Partnership will conduct interviews on June 25 and June 28 and will finalize scoring using information garnered during those interviews. The final selection, if any, will be the applicant, which in the opinion of the Estuary Partnership and the project design team, best meets the qualifications set forth in this RFQ.

ANTICIPATED SCHEDULE

RFQ Issuance: May 7, 2019

Notice of Intent to Submit: May 16, 2019, at 4:00 PM PDT

RFQ Question Period Closing: May 28, 2019, at 10:00 AM PDT

Final Addendum issued (if necessary): No later than May 30, 2019

RFQ Closing (SOQ Submittal Deadline): June 6, 2019, at 4:00 PM PDT

Interviews: June 25 and 28, 2019

Notice of Award: No later than July 8, 2019

Contract Executed: No later than August 1, 2019

Site Visit and Review of Project Documents: August 2019

Bidding Assistance: August-December 2019

Construction Oversight: June-October 2020

March-November 2021

2022 (timing and level of effort to be determined)

NOTICE OF INTENT TO SUBMIT

All firms intending to submit an SOQ in response to this RFQ must notify the Estuary Partnership's Finance Manager, Tom Argent, in writing (via e-mail sent to targent@estuarypartnership.org) by 4:00 PM PDT on May 16, 2019. The Estuary Partnership will provide written confirmation of receipt via e-mail. **The Estuary Partnership will not send addenda to, or accept SOQs from, firms that do not provide a written intent to submit prior to 4:00 PM on May 16, 2019.**

QUESTION SUBMITTAL FORMAT AND DEADLINE

Project questions should be submitted in writing (via e-mail) to Tom Argent, Finance Manager (targent@estuarypartnership.org) by 10:00 AM PDT on May 28, 2019. The Estuary Partnership will provide a written response (sent via e-mail) to all firms that submitted a notice of their intent to submit prior to 4:00 PM on May 16, 2019. The Estuary Partnership will not respond to oral questions or written questions submitted to other Estuary Partnership employees.

SOQ SUBMITTAL FORMAT AND DEADLINE

SOQ submittals (electronic only; Adobe Acrobat PDF format; 10MB maximum file size) should be directed to Tom Argent, Finance Manager, targent@estuarypartnership.org. Electronic submittals must be a single file and must be received on or before June 6, 2019 at 4:00 PM PDT. Submittals received after this time will not be accepted. The Estuary Partnership will provide a confirmation of receipt when SOQs are received. The Estuary Partnership also will notify all applicants once a firm has been selected; however, the Estuary Partnership will not respond to individual inquiries about the selection status of any submitted SOQs.

PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of the Estuary Partnership. Any information in the proposal that the Applicant desires to claim as proprietary and exempt from disclosure consistent with Oregon law must be clearly designated. The page must be identified and each particular exception from disclosure upon which the Contractor is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page. The Estuary Partnership will consider an Applicant's request for exemption from disclosure. Marking the entire proposal exempt from disclosure will not be honored. The Applicant must be reasonable in designating information as confidential.

MINORITY & WOMEN PARTICIPATION

The Estuary Partnership strongly encourages participation in all of its contracts by certified Minority, Women, or Emerging Small Business Enterprises (M/W/ESBE) firms and firms with diversity in demographics, e.g., race, religion, gender, veteran status, and disability, and/or that have made efforts to ensure a diverse workforce, including policies and practices to promote both diversity in hiring and partnering with M/W/ESBE firms.

CONTRACT SPECIFICS

The Estuary Partnership will work with the selected firm to develop a scope of work, budget, timeline, and deliverables for construction phase services. A sample Estuary Partnership contract is provided in Attachment A.

The Estuary Partnership will use the services of the selected firm for this portion of this project. However, the Estuary Partnership reserves the right, at its sole discretion, to use other firms and to solicit and obtain consulting and professional services as it sees fit at any time in the future without regard to any procurement action resulting from this RFQ.

**Lower Columbia Estuary Partnership
Steigerwald Floodplain Restoration Project
Construction Management Services**

SOQ Submittal Format

A. COMPANY INFORMATION

Business Name:
Address:
City, State, Zip Code:
Email Address:

Corporation: Partnership: Sole Owner:

Principle Place of Business:
Washington State Contractor's License Number:

Has the Applicant had a contract terminated for default in the last five years? If yes, please describe the full details of the terms for default including the other party's name, address, and phone number.

B. QUALIFICATIONS

Provide a description (six pages maximum) of the firm's qualifications and experience addressing the minimum and preferred qualifications identified in this RFQ. The description shall provide specific examples of projects completed within the past 10 years, identify the OPR and key support staff, commit to the availability of the OPR during the 2019 procurement period and 2020 and 2021 construction seasons, and describe the applicant's diversity in demographics, e.g., race, religion, gender, veteran status, and disability, as well as efforts the applicant has made to ensure a diverse workforce, including policies and practices to promote both diversity in hiring and partnering with M/W/ESBE firms.

C. RESUMES

Attach resumes for the OPR and individuals identified as key support staff. Each resume shall be no more than two pages in length. Resumes do not count towards the Qualifications page limit.

D. REFERENCES

List names, addresses, telephone numbers, and e-mail addresses of references for four projects. Briefly name and describe the related project, location, the work accomplished, role in the project, and name/address/phone of contact person.

E. RATES—DIRECT AND INDIRECT COSTS

Attach an hourly rate sheet that includes current and estimated future (2020 and 2021) rates for the identified OPR as well as other staff who may be performing work on this project. Include other applicable direct and indirect costs on the rate sheet.

AUTHORIZED SIGNATORY

The final proposal should include the following statement as well as the printed name, signature, title, and date of the person authorized to submit a bid:

"I certify to the best of my knowledge that the information in this application is true and correct and that I am legally authorized to submit this information on behalf of the applicant."

Printed Name	Signature
Title	Date

Attachment A
Sample Estuary Partnership Contract



CONTRACT

No. xx-20xx

CONTRACTOR¹ ("Contractor")	Lower Columbia Estuary Partnership ("Estuary Partnership")
<p>Organization: Project Officer: Title: Address: Phone: Fax: E-mail: Citizenship, if applicable: Non-resident alien <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Business Designation (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>Tax ID# _____</p> <p>Certified Minority, Women or Emerging Small Business Firm? <input type="checkbox"/> No <input type="checkbox"/> Yes Number: _____</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.

¹ 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 10th 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.²

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

² *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. xxxxxxx

Description: xxxxxx

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

Schedule: Completed by xxxxx, 200x

Work Product/Deliverables: xxxxxxx

Work Product/Deliverables Due: xxx, 200x

Task 2. xxxxxxx

Description: xxxxxx

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

Schedule: Completed by xxxxx, 200x

Work Product/Deliverables: xxxxxxx

Work Product/Deliverables Due: xxx, 200x

Task 3. xxxxxxx

Description: xxxxxx

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

Schedule: Completed by xxxxx, 200x

Work Product/Deliverables: xxxxxxx

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.

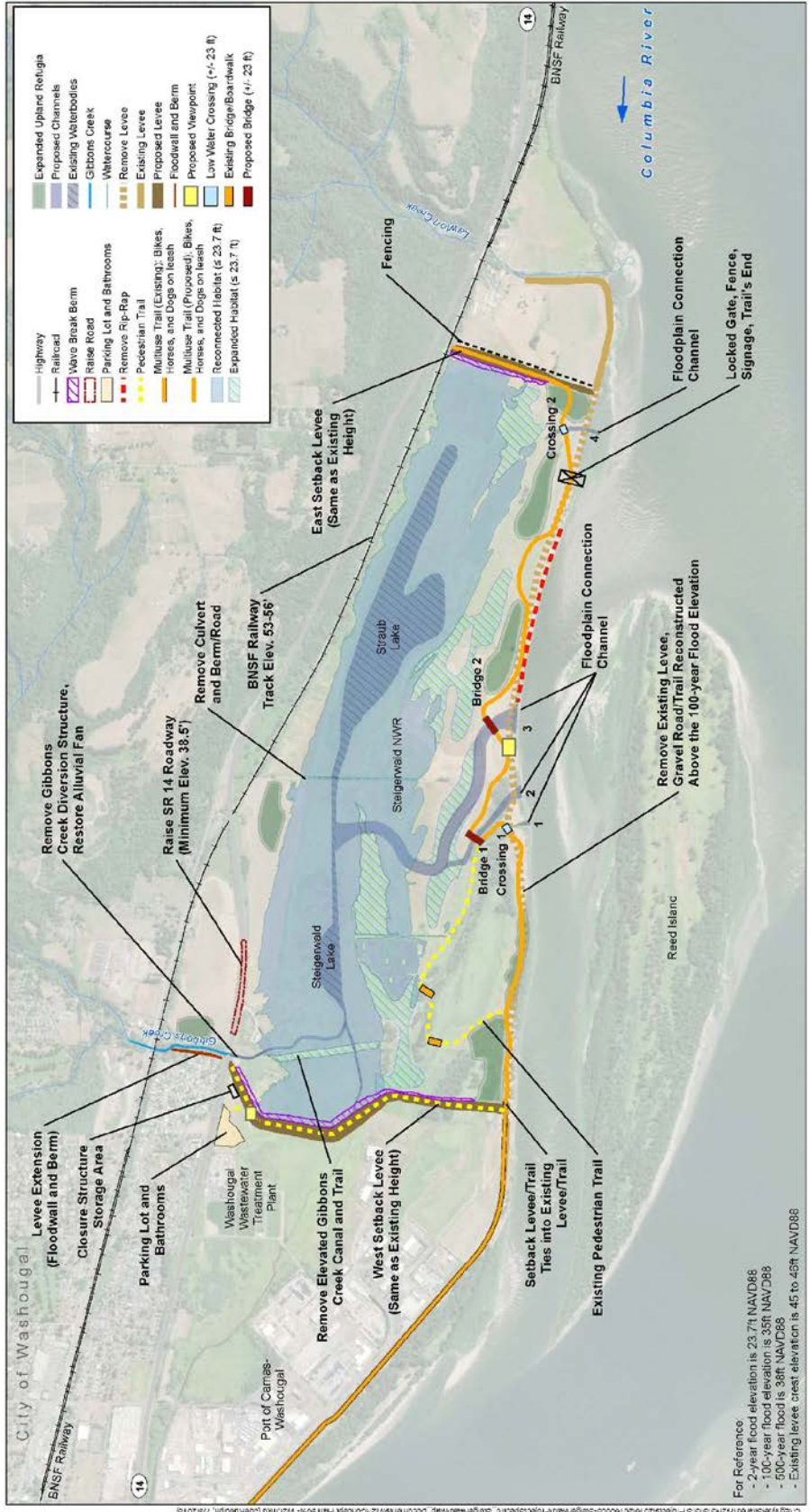
Payment. Estuary Partnership shall disburse funds in accordance with the terms and conditions of this Contract and the Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly called "Uniform Guidance"), as applicable.

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.

Attachment B Steigerwald Project Concept Design



Attachment C

Owner's Project Representative – *DRAFT* Responsibilities

The Owner's Project Representative (OPR) will be the Estuary Partnership's (Owner) agent at the Site. The OPR is anticipated to perform the following activities and will have two full-time Estuary Partnership field staff under his/her supervision to assist with field inspections, monitoring Contractor activities, and other activities, as needed.

- *Liaison*: Serve as Owner's liaison with Contractor and Engineer. Coordinate with Contractor and Engineer regarding schedule and activities.
- *Schedules*: Review weekly activity and progress schedules, schedules of Shop Drawing and Sample submittals, and schedules of values prepared by Contractor and consult with the Owner and Engineer concerning acceptability.
- *Conferences and Meetings*: Conduct meetings with Contractor, such as preconstruction meetings, progress meetings, job conferences, and other project-related meetings, and prepare and circulate copies of minutes thereof.
- *Interpretation of Contract Documents*: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- *Contractor Submittals*: Receive submittals (Samples, Shop Drawings, etc.) that are furnished at the Site by Contractor, record date of receipt, notify Engineer of availability of submittals for examination, and coordinate with Engineer to ensure submittals are evaluated and returned to Contractor in a timely manner.
- *Modifications*: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with OPR's recommendations, to Owner and Engineer. Transmit to Contractor in writing decisions as issued by Owner and Engineer.
- *Review of Work and Rejection of Defective Work*: Conduct and manage on-site observations of Contractor's work in progress to assist Owner and Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents. Report to Owner and Engineer whenever OPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that OPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
- *Inspections, Tests, and System Startups*: Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- *Records*: Record names and contact information of all Contractors, Subcontractors, and major Suppliers of materials and equipment. Maintain records for use in preparing Project documentation.
- *Reports*: Furnish to Engineer and Owner periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawings and Sample submittals. Draft and recommend to Engineer and Owner proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor. Immediately notify Owner and Engineer of the occurrence of any Site accidents, emergencies, or the discovery of any Hazardous Environmental Condition.
- *Payment Requests*: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Owner, noting particularly the

relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

- *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Owner and Engineer for review prior to payment for that part of the Work.
- *Completion:* Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied. Observe whether all items on the final list have been completed or corrected and make recommendations to Owner and Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

The OPR shall not:

- Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items, unless approved by Engineer).
- Exceed limitations of Owner's authority as set forth in the Contract Documents.
- Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
- Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
- Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Contractor.
- Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Owner.
- Accept Shop Drawing or Sample submittals from anyone other than Contractor.