

MODIFICATION #3 TO
PROFESSIONAL SERVICES AGREEMENT #4810
TILLAMOOK COUNTY AND OTAK, INC.
DESIGN SERVICES FOR 3 LANDSLIDE/SLUMP LOCATIONS: EAST CREEK ROAD,
HADLEY ROAD AND OLD WHEELER-MOHLER ROAD PROJECT

This Agreement Modification, hereafter "Modification #3", is entered into by and between OTAK, INC., hereafter "contractor" and Tillamook County, hereafter "county", pursuant to ORS 203.010. The parties entered into a Professional Services Agreement on May 3, 2017. The parties intend this modification to modify their earlier agreement only as to their expressions herein. The mutual promises of each are given in exchange and as consideration for, the promises of the other.

(~~Strike through text~~ indicates removals and *italicized text* indicates additions).

2. AGREEMENT PRICE AND AMOUNT

The price for the services provided by contractor shall be ~~Four Hundred Twenty-Five Thousand Fifty Dollars (\$425,050)~~ *Five Hundred Twenty-Three Thousand Seven Hundred Fifty-Two and 00/100 Dollars (\$523,752.00)*.

4. AGREEMENT DOCUMENTS

The following documents comprise the agreement and are incorporated herein by reference in their entirety.

- 4.1 This agreement;
- 4.2 Request for Proposal;
- 4.3 Exhibit A: Project Proposal;
- 4.4 Exhibit B: Fee Estimate; ~~and~~
- 4.5 *Exhibit C: Amendment 1 – Endangered Species Act Services for East Creek Road Project, PW 168 – OTAK Project #18227*
- 4.6 *Exhibit D: Amendment 1 – Design and Construction Services for Old Wheeler-Mohler Road Project, PW 209 -- OTAK Project #18227; and*
- 4.7 *Amended Statutory Public Contract provisions.*

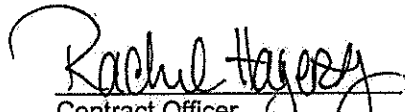
All provisions of the underlying agreement not otherwise modified by this document remain in full force and effect and are incorporated herein by reference.

Acknowledgement: EACH PARTY REPRESENTS TO THE OTHER BY THEIR SIGNATURES BELOW THAT EACH HAS READ, UNDERSTANDS AND AGREES TO ALL COVENANTS, TERMS AND CONDITIONS OF THIS AGREEMENT. EACH PARTY REPRESENTS TO THE OTHER TO HAVE THE ACTUAL AND/OR APPARENT AUTHORITY TO BIND THEIR RESPECTIVE LEGAL PERSONS, CORPORATE OR OTHERWISE, IN CONTRACT.

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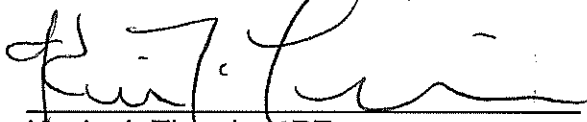
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Approved as to form and content this 15th day of April, 2021.


 Contract Officer

Dated this 10 day of May, 2021.

CONTRACTOR: OTAK, INC.



Kevin J. Timmins, PE
 808 SW Third Avenue, Suite 300
 Portland, Oregon 97204
 503-287-6825
kevin.timmins@otak.com

Dated this ___ day of _____, 2021.

THE BOARD OF COMMISSIONERS
 FOR TILLAMOOK COUNTY, OREGON

Aye Nay Abstain/Absent

 Mary Faith Bell, Chair

___ ___ ___/___

 David Yamamoto, Vice-Chair

___ ___ ___/___

 Erin D. Skaar, Commissioner

___ ___ ___/___

ATTEST: Tassi O'Neil,
 County Clerk

APPROVED AS TO FORM:

By: _____
 Special Deputy

 Joel W. Stevens, County Counsel



Exhibit A

Amendment 1

Endangered Species Act Services for East Creek Road Project, PW 168 Otak Project #18227

Scope of Work

This scope of work amends the contract for “3 Landslide/Slump Locations: East Creek Road, Hadley Road and Old Wheeler-Mohler Road Project” with Tillamook County, contract dated May 3, 2017. This amendment was developed in response to the level of effort that was necessary to address potential northern spotted owl (NSO) and marbled Murrelet (MM) ESA and associated Northwest Forest Plan permitting not initially identified in the original FEMA statement of work. The heavy forest cover of the East Creek Road slide site is reflected in a habitat polygon for NSO and MM. Additional permitting requirements were identified for this location. FEMA funding of the additional environmental compliance services for the East Creek Road Landslide Repair Project will require environmental compliance activities to adhere to FEMA environmental regulations and requirements. This amendment also covers the anticipated level of effort to provide construction engineering and management services. Contract time to be extended to December 31, 2022.

Task 1 – Project Management and Coordination (Additional Effort)

With project delays due to additional environmental work and permitting at the East Creek Road site, funding prioritization, and the addition of construction management and inspection services to assist Tillamook County, the permit consultation time frame will likely push construction into 2022 to avoid winter wet weather construction. We will create an updated project schedule and anticipate twenty (20) additional months of project management, extending the project timeline through December 2022.

Consultant shall:

- Prepare an updated project schedule in MS Project.

Deliverables:

- Detailed Project Schedule

Task 9 – Environmental Documentation and Permitting (Additional Effort)

Task 9.3 – East Creek Road

The original work area for East Creek Road from FEMA was inaccurate and affected the proposal stage due diligence efforts to identify and scope of environmental issues such as species.

Task 9.3.1 Coordination, Accumulation and Review of Information – East Creek Road

Consultant Shall:

- Obtain and review existing project background baseline environmental information for the East Creek Road project site including, but not limited to, existing environmental documentation provided by the County and FEMA, project plans, topographic mapping, National Wetland Inventory (NWI) and Local Wetland Inventory (LWI) maps, and the Tillamook County Soil Survey.
- Consult with FEMA environmental staff to confirm FEMA requirements and timelines for environmental compliance, and will consult with agencies and other groups including, but not limited to the National Marine Fisheries Service (NMFS), the Oregon Department of Fish and Wildlife (ODFW), and Oregon Biodiversity Information Center (ORBIC) to obtain the most current information on the presence of all threatened and endangered fish, plant, and wildlife species within the vicinity of the East Creek Road site.

Assumptions:

- This task does not involve meetings or a site visit.

Task 9.3.2 Endangered Species Act Permitting for Terrestrial Species – East Creek Road

The use of FEMA funding to complete the project constitutes a federal nexus for the project. The existence of this federal funding nexus requires compliance with Section 7 of the federal Endangered Species Act (ESA). Forested areas adjacent to the project potentially provide habitat for federally listed northern spotted owl, and marbled Murrelet, and are designated Critical Habitat for northern spotted owl. As such, construction at the East Creek project site has the potential to adversely affect listed northern spotted owls and marbled Murrelet and compliance with Section 7 of the ESA will be required.

Use of existing programmatic ESA compliance processes are not available for the project based on preliminary scoping discussions with FEMA. As such, ESA compliance will be achieved by completing individual consultation with the United States Fish and Wildlife Service (Service) through submission of a Biological Assessment (BA).

Consultant shall:

- Prepare a streamlined BA that describes the project, discusses conservation measures and best management practices to minimize impacts, describes potential take of northern spotted owl and/or marbled Murrelet, and impacts to northern spotted owl Critical Habitat.
- Provide the draft BA to County for review.
- Revise the draft BA per County review comments and prepare a final document for submittal to the Service.

Assumptions:

- ESA consultation for other federally listed wildlife and plants will not be required.
- No field work will be required to complete this task.
- One site visit with Service, USFS, and project team staff is anticipated for this task.
- Individual consultation with USFWS will be required and use of programmatic ESA compliance processes is not available for the project.
- If coordination with the Service indicates No Effect to ESA listed species, Consultant shall prepare a No Effect Memorandum for the project file, rather than a BA.
- FEMA will complete all required project National Environmental Policy Act compliance reviews and documentation.

Deliverables:

- Draft/Final BA (electronic copy)

Task 9.3.3 Endangered Species Act Aquatic Species Programmatic Compliance – East Creek Road

The use of FEMA funding to complete the project constitutes a federal nexus for the project. The existence of this federal funding nexus requires compliance with Section 7 of the federal ESA and the Magnuson-Stevens Fisheries Conservation Act (MSA). East Creek provides habitat for federally listed Coho salmon of the Oregon Coast Evolutionarily Significant Unit (ESU), is designated Critical Habitat for the ESU, and is Pacific Salmon Essential Fish Habitat per the MSA. As such, construction within East Creek has the potential to adversely affect listed Coho salmon and compliance with Section 7 of the ESA and with the MSA will be required.

FEMA is currently developing a programmatic ESA compliance process with the National Marine Fisheries Service (NMFS). For the purposes of this scoping effort, Otak project team assumes the new programmatic will be in place by the time work on this task commences.

Consultant shall:

- Prepare a programmatic BA compliance document that fulfills the requirements of the programmatic. Likely subject matter will include a project description, discussion of conservation measures and best management practices to minimize impacts, and descriptions of potential lethal and sublethal take of Coho Salmon, impacts to Critical Habitat, and impacts to Pacific Salmon EFH.
- Provide the draft programmatic BA compliance document to County for review.
- Revise the draft programmatic BA compliance document per County review comments and prepare a final document for submittal to NMFS.

Assumptions:

- No field work will be required to complete this task.
- The FEMA programmatic ESA compliance process will be available for the project within the design and permitting schedule.
- FEMA will complete all required project National Environmental Policy Act compliance reviews and documentation.

Deliverables:

- Draft/Final Programmatic BA compliance document (electronic copy)

Task 9.3.4 USFS Biological Evaluation – East Creek Road

Consultant shall:

- Seek a temporary construction easement from the U.S. Forest Service (Siuslaw National Forest) to extend the project work area beyond the County-owned right-of-way at the project. Project-related activities will disturb the USFS-administered land within the easement triggering a need for the project to comply with the National Forest Management Act (NFMA) and the Northwest Forest Plan (NWFP).
- Coordinate with USFS biologists and prepare a Biological Evaluation (BE) to demonstrate project compliance with NFMA and NWFP. The BE will address potential impacts of the project on USFS sensitive species, including non-vascular and vascular plants, fish, and wildlife species identified as sensitive by the Siuslaw National Forest.

Assumptions:

- FEMA will obtain the Special-Use Authorization with the Forest Service, if required for the temporary construction easement.
- FEMA will complete all required project National Environmental Policy Act compliance reviews and documentation.

Deliverables:

- Draft and Final BE (electronic copy)

FEES for additional design and permitting services = \$40,522.

Task 12 – Construction Engineering

Task 12.3 – East Creek Road

Scope and Fee for CE Services will be provided upon FEMA/OEM approval of construction funding.

Exhibit B

Amendment 1

Design and Construction Services for Old Wheeler-Mohler Road Project, PW 209

Otak Project #18227

Scope of Work

This scope of work amends the contract for “3 Landslide/Slump Locations: East Creek Road, Hadley Road and Old Wheeler-Mohler Road Project” with Tillamook County, contract dated May 3, 2017. This amendment was developed in response to the level of effort that was necessary to develop final plans, specifications and estimate from the originally scoped 60% level design for Old Wheeler-Mohler Road. This amendment also covers the anticipated level of effort to provide construction engineering and management services to develop FEMA required documentation for environmental permits and project close out documents. Contract time will be extended to December 31, 2022.

Task 1 – Project Management and Coordination

With project delays due to additional environmental work and permitting at the Old Wheeler-Mohler Road site, funding prioritization, and the addition of construction management and inspection services to assist Tillamook County, the permit consultation time frame will likely push construction into 2022 to avoid winter wet weather construction. We will create an updated project schedule and anticipate twenty (20) additional months of project management, extending the project timeline through December 31, 2022.

Consultant shall:

- Prepare an updated project schedule in MS Project.

Deliverables:

- Detailed Project Schedule

Task 9 – Environmental Documentation and Permitting

Task 9.2 – Old Wheeler-Mohler Road

The existence of FEMA funding requires compliance with FEMA National Environmental Policy Act (NEPA) regulations. Because the Old Wheeler-Mohler Road project area is devoid of regulated natural resources and other sensitive elements of the built and natural environment, the project will likely be considered Categorical Exempt from detailed NEPA review (NEPA Class II project). Consultant will prepare a brief narrative documenting the desktop and field findings completed in June 2017 at the Old Wheeler -Mohler Road site that indicated no regulated natural resources were located in the project area of potential impact.

Assumptions:

- The information provided by Consultant under this task is intended to support FEMA’s preparation of formal Categorical Exclusion documentation for the project.

Consultant will prepare brief memo documenting the desktop and field reconnaissance natural resource findings.

Deliverables:

- Draft/Final summary of desktop and field reconnaissance findings.

Task 10 – Advanced Design

Once Preliminary Design is complete, the design team will focus on the task of completing the design details and construction documents required to bid the project. Advanced Design is the first draft of a complete set of Bid Documents. The roadways will be designed to match the roadway that was in place before the slope failures.

Task 10.2 – Old Wheeler-Mohler Road

Advanced plans for Old Wheeler-Mohler Road will be developed to Final Design level with a biddable document set, instead of for construction by the County. A Construction Keynote system will be included to reconcile typical bid items with specifications where practical and develop non-standard bid items and special provisions as necessary.

Consultant shall:

- Prepare a Draft and Final Geotechnical Design Memorandum to summarize geotechnical explorations, laboratory testing, and recommendations on landslide mitigation, foundation conditions and slope stability.
- Revise 30% project design and drawings based on review comments
- Advance project designs to 95% and advance plan set to include sheets shown in Table 10.2.
- Prepare additional construction details
- Prepare an engineer’s estimate of advanced design construction costs;
- Perform internal design review.
- Attend coordination meeting with TCPW and applicable stakeholders for Final design review.

Table 10.2 – Plan Set Assumptions for Old Wheeler-Mohler Road

Sheet Description	Sheet Count Per Submittal		
	60%	95%	Final
Cover Sheet	1	1	1
General Notes	1	1	1
Existing Conditions	1	1	1
Roadway Section (Typ.)		1	1
Proposed Roadway Sections		1	1
Construction Plan	1	1	1
Erosion Control Plan		1	1
Erosion Control Details		1	1
Slide Mitigation Plan		1	1
Slide Mitigation Details	2	2	2
TOTAL	5	11	11

Deliverables:

- Final Geotechnical Design Memorandum (PDF file)
- Advanced Design Plan Sets (PDF files)
- Advanced Design Construction Cost Estimates (PDF file)

Task 11 – Final Design and Bid Assistance

Task 11.2 – Old Wheeler-Mohler Road

Old Wheeler-Mohler Road plans were originally scoped to provide Advance Design level plans for consideration by the County to construct, without advertising to bid. The decision has been made by the County not to construct, so the amended scope of work is to take the Advanced Design Plans to a Final Design and Bid Assistance level, with biddable documents as the deliverable.

Consultant shall:

- Incorporate review comments from Advanced Design and prepare Final Design
- Assemble Final, sealed Plan Set for bidding
- Update quantities, bid items and final construction cost estimate
- Perform internal design review.
- Assist the County in preparation of the Bid Book
- Attend pre-bid meeting
- Support TCPW during bidding by responding to questions

Deliverables:

- Stamped Construction Plan drawings
- Engineer's Construction cost estimate
- Stamped Technical specifications

Fees for Additional Design and Permit Documentation Services = \$51,016

Task 12 – Construction Engineering

Task 12.2 – Old Wheeler-Mohler Road

Task 12.2.1 – Construction Engineering

This task is to provide limited Construction phase support to Tillamook County Public Works to confirm that construction of the project is completed in substantial accordance with the plans and specifications and provide FEMA documentation for Project Close Out. Tillamook County Public Works to provide Construction Contract Management, onsite Construction Monitoring and provide documentation to Consultant to assist with development of Project Close Out documents.

Consultant shall:

- Coordinate archiving Contractor submittals and County communications and Inspection Reports for FEMA documentation as supplied by Tillamook County Public Works.

Deliverables:

- Final documentation and communications,

Task 12.2.2 – Construction Monitoring

Tillamook County Public Works will provide all Construction Monitoring. Construction Monitoring or Construction Engineering is not included in Consultant's scope of work.

Task 12.2.3 – Construction Survey Support

This task is to provide computer point and data files to contractor's surveyor during construction.

Consultant shall:

- Provide survey control and CADD files to contractor

Task 12.2.4 – Project Close-out

This task is to complete final on-site inspections and submit final project records required for final payment.

Consultant shall:

- Issue final completion recommendation to County.
- Create As-Built Drawings based on data collected through observation and as submitted by contractor.
- Submit final project records (County to provide communications with Contractor, Inspection reports, Contractor Submittals, Change Orders, Requests For Information)

Deliverables:

- As-built drawings in electronic format
- Final project records

Fees for Additional Construction Engineering Services = \$7,164

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AMENDED STATUTORY PUBLIC
CONTRACT PROVISIONS

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract and shall be responsible for such payment of all persons supplying such labor or material to any sub-contractor. If contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the contractor or a sub-contractor by any person in connection with the contract as such claim becomes due, the owner may pay such claim to the persons furnishing the labor or materials and charge the amount of payment against funds due or to become due contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the contractor or his surety from his or its obligation with respect to any unpaid claim. If the owner is unable to determine the validity of any claim for labor or materials furnished, the owner may withhold from any current payment due contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such contractor or sub-contractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from contractor or any sub-contractor in connection with the performance of the contract shall promptly be paid.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the owner on account of any labor or materials furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. Contractor and any sub-contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. If this contract involves lawn and landscape maintenance, contractor shall salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost effective.
6. Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages

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of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

7. Contractor shall employ no person for more than ten (10) hours in any one (1) day, or forty (40) in any one (1) week, except in cases of necessity, emergency or where public policy absolutely requires it.

Contractor's employees shall be paid at least time and one-half (1 and 1/2) for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under Personal Services Contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime.

Persons employed by contractor shall receive at least time and one-half (1 and 1/2) pay for work performed on legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G) and for all time worked in excess of ten (10) hours in any one (1) day or in excess of forty (40) hours in any one (1) week, whichever is greater.

8. The contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
9. *Contractor must give notice to employees, in writing, that they cannot be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation related to a Federal contract or grant.*
10. All employers working under the contract are either subject employers who will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
11. The contract may be cancelled at the election of owner for any willful failure on the part of contractor to faithfully perform the contract according to its terms.