



# Council Business Meeting

February 21, 2023

|                    |   |                       |
|--------------------|---|-----------------------|
| <b>Agenda Item</b> | Contract with Cornforth Consultants for Federal Energy Regulatory Commission (FERC) Comprehensive Assessment (CA) of Hosler Dam   |                       |
| <b>From</b>        | Scott Fleury PE   | Public Works Director |
| <b>Contact</b>     | <a href="mailto:Scott.Fleury@ashland.or.us">Scott.Fleury@ashland.or.us</a>  |                       |
| <b>Item Type</b>   | Requested by Council <input type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input checked="" type="checkbox"/> Presentation <input type="checkbox"/> |                       |

## **SUMMARY**

Before the Council is a contract for professional engineering services with Cornforth Consultants in the amount of \$599,000 for development of the Hosler Dam Comprehensive Assessment (CA). The CA is a requirement of the Federal Energy Regulatory Commission (FERC) Part 12 program.

## **POLICIES, PLANS & GOALS SUPPORTED**

City Council Goals:

Essential Services

- Drinking Water System

Enhance Value Services:

- Water Conservation
- Address Climate Change

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects
- Maintain and improve infrastructure that enhances the economic vitality of the community
- Evaluate all city infrastructure regarding planning management and financial resources

## **BACKGROUND AND ADDITIONAL INFORMATION**

The City of Ashland generates hydroelectric power at the Reeder Gulch Powerplant located at the water treatment plant site adjacent to Ashland Creek. As a generator of hydroelectric power, the City falls under the regulatory control of FERC, specifically the Part 12 Safety Inspection program. The Part 12 program is meant to ensure the safe operation of the system and provide protection for the citizens of Ashland. The City has numerous obligations to adhere to for compliance under the FERC Part 12 Safety Inspection Guidelines.

As part of the Part 12D requirements, the City is required to hire an independent consultant every five years to inspect the project and develop a final report that is submitted to FERC for review and comment. In 2022 an update to Chapter 18 Code of Federal Regulations (CFR) Part 12 was released





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setting new standards for the Dam Safety Inspections that fall under the FERC regulatory umbrella. The updated program now requires a Comprehensive Assessment (CA) and Periodic Inspection (PI). The CA and PI are performed on alternating five (5) year schedules and FERC has required the 2023 Part 12-D for the City be the first CA for the project.

The CA is a more detailed safety review than a PI. One key difference between the new CA and previous Part 12D evaluations is the focus on identifying risk-driving potential failure modes (PFMs) for the structure. The CA process incorporates a level 2 risk assessment (L2RA) that roughly follows the semi-quantitative risk assessment (SQRA) methodology developed by the US Army Corps of Engineers and the Bureau of Reclamation.

The new FERC guidelines outline specific qualifications for personnel performing a CA. The role of the independent consultant (IC) is similar to that under the previous Part 12D program, but the IC is now required to have a very broad technical expertise. It is rare for a single IC to possess the requisite experience in all technical disciplines to meet FERC's requirements. In response to the new regulations most licensees are using a team that includes multiple (typically two) ICs and several subject-specific subject matter experts (SMEs) to prepare a CA.

An SME typically has a similar level of experience as an IC, but their role is limited to a specific area of technical analysis necessary to complete the L2RA and CA. The role of the SME is to help the ICs and other members of the team understand the loading, path to failure, or consequences of dam breach so that the risk can be properly quantified in a risk framework. The L2RA component of the CA requires a risk facilitator and risk analyst to complete the risk evaluation. There are currently very few individuals in the country that have the requisite training and experience to facilitate an L2RA under the new regulations. The results of the L2RA are summarized in a risk report that is included as an appendix to the CA report.

Cornforth Consultants was previously selected through the Request for Proposal-Qualifications Based Selection Process to perform the 2018 Independent Inspection. Within that solicitation award it was noticed the selected consultant could provide for additional Part 12 services for an additional five year term as needed after the completion of the 2018 Inspection. Staff is using this award process for moving forward with scope and fee negotiations with Cornforth Consultants for the CA requirement.

The scope of work as part of this personal services contract is focused on developing the formal CA documents, facilitating the site inspection and L2RA and PFMA workshops. The Council previously awarded a professional services contract to Cornforth Consultants for development of seismic and hydrological loading curves needed for the L2RA workshop.

- [November 1, 2022 - Staff Report](#)
- [November 1, 2022 Council Business Meeting Minutes](#)



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This contract is time sensitive as all work is required to be completed by the end of 2023 and the CA report submitted to FERC.

## **Comprehensive Assessment Tasks:**

1. Develop Part 12D Inspection Plan and IC Team Proposal
  - a. IC and team must meet requirements of 12 CFR (D) 12.31
  - b. IC Approval Requirements: 12 CFR (D) 12.34
  - c. Facilitators Required for L2RA and PFMA
2. Review of Prior Reports to Develop Pre-Inspection Preparation Report
3. Prepare Pre-Inspection Preparation Report (PIPR)
  - a. 12 CFR (D) 12.42
4. General Field Inspection
  - a. 12 CFR (D) 12.32
5. Facilitate, Develop all Requirements and Documentation for the PFMA Session
  - a. Failure has been revised to include not only the loss of the reservoir, but also the inability of the project features or components to perform their intended function and the project features or components performing in an impaired or compromised fashion. This includes mis operation of project elements.
6. Facilitate, Develop all Requirements Documentation for the L2RA Session
7. Develop full CA Report following Guidelines
  - a. 12 CFR (D) 12.38
8. Facilitate CA Review Meeting
9. Assist City as needed in Developing Corrective Measures Plan and Schedule



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**Figure 1: FERC Part 12 CA Calendar Requirements**

| Licensee Activity  | Approximate Time  | FERC Activity   |
|--|---|---|
|  | 18 months before CAR due date   | <b>FERC-RO Issues Part 12D Reminder Letter</b>                          |
| <i>Participates in Initial Coordination Call</i>   | Within 30 days after Reminder Letter is issued  | <i>FERC-RO holds Initial Coordination Call with Licensee</i>            |
| <u>Licensee develops the scope of work, identifies the required disciplines for the IC Team, and identifies one or more people to serve as the IC(s) and facilitator(s), as needed</u> |   |   |
| <b>Submit Part 12D Inspection Plan to FERC-WO</b>  | At least 6 months in advance of the first IC Team activity                              |   |
|  | Within 30 days after submission of the Part 12D Inspection Plan                         | <b>FERC-WO responds to Part 12D Inspection Plan</b>                     |
| <i>Participates in Second Coordination Call</i>  | Within 6 weeks after Approval (or Conditional Approval) of the Part 12D Inspection Plan | <i>FERC-RO holds Second Coordination Call with Licensee and IC Team</i> |
| <u>IC Team performs their review of existing information, prepares the CA-PIPR, and provides it to the Licensee</u>  |   |   |
| <b>Submit CA-PIPR to FERC-RO</b>   | At least 30 days prior to the first IC Team activity                                    |   |
|  | Within 2 weeks after submittal of the CA-PIPR   | <b>FERC-RO Responds to the CA-PIPR</b>                                  |
| <i>Site Inspection</i>   | Date(s) previously coordinated with all parties in advance                              | <i>Attends Site Inspection</i>  |
| <i>PFMA</i>  |   | <i>Attends PFMA</i>   |
| <i>Level 2 Risk Analysis</i>   |   | <i>Attends Level 2 Risk Analysis</i>                                    |
| <u>IC Team prepares the CAR and provides it to the Licensee</u>  |   |   |
| <b>Submit CAR to FERC-RO</b>   | Due Date as stated in the Part 12D Reminder Letter                                      |   |
| <b>Submit CAR Review Meeting Presentation to FERC-RO</b>   | At least 7 days prior to the CAR Review Meeting   |   |
| <i>CAR Review Meeting</i>  | Within 60 days after submitting the CAR   | <i>Attends CAR Review Meeting</i>                                       |
| <b>Submit Plan and Schedule to address IC Recommendations to FERC-RO</b>   | Within 60 days after submitting the CAR   |   |
| <u>FERC reviews the CAR</u>  |   |   |
|  |   | <b>FERC-RO responds to the CAR</b>                                      |

**Bold text** indicates an item that will be submitted to or issued by the FERC.

*Italicized text* indicates an in-person or teleconference activity.

Underlined text that spans across all three columns represents an activity, either by the Licensee, IC Team, or the FERC, that does not require formal communication or coordination.

## **FISCAL IMPACTS**

The proposed fee for the scope of work is \$599,000 and a portion of the overall project cost will come from existing appropriations within the Water Fund between now and the end of the biennium. A significant percentage of the work will be conducted in fiscal year 2024 and staff will need to request additional appropriations through the 2023-2025 Budget Process for this work. In discussion with Cornforth the expectation





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is approximately 25% of the project cost will occur prior to June 30<sup>th</sup>, 2023 and the remaining 75% to be expended between July 1, 2023 and June 30<sup>th</sup>, 2024.

## **DISCUSSION QUESTIONS**

Does the Council have any questions about the CA process?

## **SUGGESTED NEXT STEPS**

Next steps include issuing notice to proceed after award of contract.

## **MOTIONS**

I move to approve a Legal Department approved professional services contract with Cornforth Consultants Inc. in an amount not to exceed \$599,000.

## **REFERENCES & ATTACHMENTS**

Attachment #1: Professional Services Contract with Cornforth Consultants

Attachment #2: Request for Proposal

Attachment #3: FERC Comprehensive Assessment Notification Letter

**PERSONAL SERVICES AGREEMENT (GREATER THAN \$35,000.00)**

|   |   |
|---|---|
| <p><b>CITY OF<br/>ASHLAND</b><br/>20 East Main Street<br/>Ashland, Oregon 97520<br/>Telephone: 541/488-5587<br/>Fax: 541/488-6006</p> | <p>CONSULTANT: Cornforth Consultants Inc.<br/>CONSULTANT’S CONTACT: Gerry Heslin<br/>ADDRESS: 10250 SW Greenburg Road, Suite 111<br/>Portland, Oregon 97223<br/>TELEPHONE: (503) 452-1100</p> |
|---|---|

This Personal Services Agreement (hereinafter “Agreement”) is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and Cornforth Consultants Inc. a domestic business corporation ("hereinafter “Consultant”), for 2023 Hosler Dam Comprehensive Assessment Workshop.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the City and Consultant hereby agree as follows:

- 1. Effective Date and Duration:** This Agreement shall become effective on the date of execution on behalf of the City, as set forth below (the “Effective Date”), and unless sooner terminated as specifically provided herein, the Agreement is terminated upon the City's affirmative acceptance of Consultant's Work as complete and Consultant's acceptance of the City's final payment therefore. The work shall be completed no later than June 30, 2024.
- 2. Scope of Work:** Consultant will provide the 2023 Hosler Dam Comprehensive Assessment Workshop as more fully set forth in the Consultant’s Proposal dated January 30, 2023, which is attached hereto as “Exhibit A” and incorporated herein by this reference. Consultant’s services are collectively referred to in this Agreement as the “Work.”
- 3. Supporting Documents/Conflicting Provisions:** This Agreement and any exhibits or other supporting documents shall be construed to be mutually complementary and supplementary wherever possible. In the event of a conflict which cannot be so resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the exhibits or supporting documents.
- 4. All Costs Borne by Consultant:** Consultant shall, at its own risk, perform the Work described above and, unless otherwise specified in this Agreement, furnish all labor, equipment, and materials required for the proper performance of such Work.

5. **Qualified Work:** Consultant has represented, and by entering into this Agreement now represents, that all personnel assigned to the Work to be performed under this Agreement are fully qualified to perform the service to which they will be assigned in a skilled and worker-like manner and, if required to be registered, licensed or bonded by the State of Oregon, are so registered, licensed and bonded. Work will be completed within generally accepted standards of professional care followed by practitioners in the same locality and under similar conditions.
6. **Compensation:** City shall pay Consultant the sum of **\$599,000.00 (five hundred ninety-nine thousand dollars)** as full compensation for Consultant's performance of all Work under this Agreement. In no event shall Consultant's total of all compensation and reimbursement under this Agreement exceed the sum of **\$599,000.00 (five hundred ninety-nine thousand dollars)** without the express, written approval from the City official whose signature appears below, or such official's successor in office. Payments shall be made within thirty (30) days of the date of receipt by the City of Consultant's invoice. Should this Agreement be terminated prior to completion of all Work, payments will be made for any phase of the Work completed and accepted as of the date of termination.
7. **Ownership of Work/Documents:** All Work, work product, or other documents produced in furtherance of this Agreement belong to the City, and any copyright, patent, trademark proprietary or any other protected intellectual property right shall vest in and is hereby assigned to the City.
8. **Statutory Requirements:** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
9. **Living Wage Requirements:** If the amount of this Agreement is \$24,050.68 or more, Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Consultant is also required to post the notice attached hereto as "Exhibit B" predominantly in areas where it will be seen by all employees.
10. **Indemnification:** Consultant hereby agrees to defend, indemnify, save, and hold City, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, of whatsoever nature to the extent caused by Consultant's willful misconduct or negligent acts, errors or omissions involved with the performance of this Agreement by Consultant (including but not limited to, Consultant's employees, agents, and others designated by Consultant to perform Work or services attendant to this Agreement). However, Consultant shall not be held responsible for any losses, expenses, claims, subrogations, actions, costs, judgments, or other damages, caused solely by the negligence of City.
11. **Termination:**
  - a. Mutual Consent. This Agreement may be terminated at any time by the mutual consent

- of both parties.
- b. City's Convenience. This Agreement may be terminated by City at any time upon not less than thirty (30) days' prior written notice delivered by certified mail or in person.
  - c. For Cause. City may terminate or modify this Agreement, in whole or in part, effective upon delivery of written notice to Consultant, or at such later date as may be established by City under any of the following conditions:
    - i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
    - ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement; or
    - iii. If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.
  - d. For Default or Breach.
    - i. Either City or Consultant may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and its intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, or within such other period as the party giving the notice may authorize in writing, then the Agreement may be terminated at any time thereafter by a written notice of termination by the party giving notice.
    - ii. Time is of the essence for Consultant's performance of each and every obligation and duty under this Agreement. City, by written notice to Consultant of default or breach, may at any time terminate the whole or any part of this Agreement if Consultant fails to provide the Work called for by this Agreement within the time specified herein or within any extension thereof.
    - iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
  - e. Obligation/Liability of Parties. Termination or modification of this Agreement pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to Subsection a, b, c, or d of this section, Consultant shall immediately cease all activities under this Agreement, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Consultant shall deliver to City all documents, information, works-in-progress and other property that are or would be deliverables had



the Agreement been completed. City shall pay Consultant for Work performed prior to the termination date if such Work was performed in accordance with this Agreement.

12. **Independent Contractor Status:** Consultant is an independent contractor and not an employee of the City for any purpose. Consultant shall have the complete responsibility for the performance of this Agreement. Consultant shall provide workers' compensation coverage as required in ORS Chapter 656 for all persons employed to perform Work pursuant to this Agreement. Consultant is a subject employer that will comply with ORS 656.017.
13. **Assignment:** Consultant shall not assign this Agreement or subcontract any portion of the Work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Consultant shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by City of any assignment or subcontract of the Work shall not create any contractual relation between the assignee or subcontractor and City.
14. **Default.** The Consultant shall be in default of this Agreement if Consultant: commits any material breach or default of any covenant, warranty, certification, or obligation under the Agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in its obligations under the Agreement; or attempts to assign rights in, or delegate duties under, this Agreement.
15. **Insurance.** Consultant shall, at its own expense, maintain the following primary and non-contributory insurance:
  - a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers
  - b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence, and \$3,000,000 (three million dollars) aggregate. This is to cover any damages caused by error, omission or negligent acts related to the Work to be provided under this Agreement.
  - c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence, and \$3,000,000 (three million dollars) aggregate, for Bodily Injury, Death, and Property Damage.
  - d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
  - e. 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 thirty (30) days' prior written notice from the Consultant or its insurer(s) to the City.
  - f. Additional Insured/Certificates of Insurance. Consultant shall name the City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies, excluding Professional Liability and Workers' Compensation, required herein, but only with

respect to Consultant's services to be provided under this Agreement. The consultant's insurance is primary and non-contributory. As evidence of the insurance coverages required by this Agreement, the Consultant shall furnish acceptable insurance certificates prior to commencing the Work under this Agreement. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

**16. Nondiscrimination:** Consultant agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of any Work under this Agreement when employed by Consultant. Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Consultant agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.

**17. Consultant's Compliance With Tax Laws:**

17.1 Consultant represents and warrants to the City that:

17.1.1 Consultant shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

17.1.2 Consultant, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

**18. Notice.** Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed at the address or facsimile number set forth below:

**If to the City:**

City of Ashland - Public Works Department  
Attn: Contract Administrator  
20 E. Main Street  
Ashland, Oregon 97520  
Phone: (541) 488-5587

**With a copy to:**

City of Ashland - Legal Department  
20 E. Main Street  
Ashland, Oregon 97520  
Phone: (541) 488-5350

**If to Consultant:**

Cornforth Consultants  
10250 SW Greenburg Road, Suite 111  
Portland, Oregon 97223

19. **Governing Law.** This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Jackson County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.
20. **Amendments.** This Agreement may be amended only by written instrument executed by both parties with the same formalities as this Agreement.
21. **Nonappropriations Clause.** Funds Available and Authorized: City has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within the City's fiscal year budget. Consultant understands and agrees that City's payment of amounts under this Agreement attributable to Work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this Agreement without penalty or liability to City, effective upon the delivery of written notice to Consultant, with no further liability to Consultant.
22. **Standard of Care.** Consultant shall perform services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The Consultant shall perform services as

expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified.

- 23.** THIS AGREEMENT AND THE ATTACHED EXHIBITS CONSTITUTE THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT 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. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONSULTANT, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
- 24. Certification.** Consultant shall sign the certification attached hereto as “Exhibit C” which is incorporated herein by this reference.

**CITY OF ASHLAND:**

**CORNFORTH CONSULTANTS (CONSULTANT):**

By: \_\_\_\_\_  
City Manager

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Purchase Order No. \_\_\_\_\_

**(W-9** is to be submitted with this signed Agreement)

**APPROVED AS TO FORM:**

*Carmel S. Zahran*

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Assistant City Attorney

2/15/23

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Date

**EXHIBIT B**

**CITY OF ASHLAND, OREGON**

# City of Ashland LIVING

# WAGE

ALL employers described below must comply with City of Ashland laws regulating payment of a living wage.



**\$17.02** per hour, effective June 30, 2022.

**The Living Wage is adjusted annually every June 30 by the Consumer Price Index.**

## Employees must be paid a living wage:

- For all hours worked under a service contract between their employer and the City of Ashland if the contract exceeds **\$24,050.68** or more.
- For all hours worked in a month if the employee spends 50% or more of the employee's time in that month working on a project or

portion of business of their employer, if the employer has ten or more employees, and has received financial assistance for the project or business from the City of Ashland in excess of **\$24,050.68**.

- If their employer is the City of Ashland, including the Parks and Recreation Department.
- In calculating the living wage, employers may add the value of health care, retirement,

401K and IRS eligible cafeteria plans (including childcare) benefits to the amount of wages received by the employee.

- **Note:** For temporary and part-time employees, the Living Wage does **not** apply to the first 1040 hours worked in any calendar year. For more details, please see Ashland Municipal Code Section 3.12.020.

## For additional information:

Call the Ashland City Administrator's office at 541-488-6002 or write to the City Administrator, City Hall, 20 East Main Street, Ashland, OR 97520, or visit the City's website at [www.ashland.or.us](http://www.ashland.or.us).

**Notice to Employers:** This notice must be posted predominantly in areas where it can be seen by all employees.

**CITY OF  
ASHLAND**

**EXHIBIT C**

**CERTIFICATIONS/REPRESENTATIONS:** Consultant, by and through its authorized representative, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Consultant is not subject to backup withholding because: (i) it is exempt from backup withholding, or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Consultant further represents and warrants to City that: (a) it has the power and authority to enter into this Agreement and perform the Work, (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (c) the work under the Agreement shall be performed in accordance with the highest professional standards, and (d) Consultant is qualified, professionally competent, and duly licensed (if applicable) to perform the Work. Consultant also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, it is an independent contractor as defined in the Agreement, it is authorized to do business in the State of Oregon, and Consultant has checked four or more of the following criteria that apply to its business.

- \_\_\_\_\_ (1) Consultant carries out the work or services at a location separate from a private residence or is in a specific portion of a private residence, set aside as the location of the business.
- \_\_\_\_\_ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
- \_\_\_\_\_ (3) Telephone listing is used for the business separate from the personal residence listing.
- \_\_\_\_\_ (4) Labor or services are performed only pursuant to written contracts.
- \_\_\_\_\_ (5) Labor or services are performed for two or more different persons within a period of one year.
- \_\_\_\_\_ (6) Consultant assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission (professional liability) insurance or liability insurance relating to the Work or services to be provided.

\_\_\_\_\_  
Consultant's signature

\_\_\_\_\_  
Date

January 30, 2023

P-1781

Scott Fleury, P.E.  
Public Works Director  
City of Ashland Public Works  
20 East Main Street  
Ashland, Oregon 97520

**Proposal for Engineering Support REV 1  
2023 Hosler Dam Comprehensive Assessment  
Ashland, Oregon**

Dear Scott,

In accordance with your request, we are pleased to submit this proposal to provide engineering support related to the 2023 Federal Energy Regulatory Commission (FERC) Comprehensive Assessment at Hosler Dam. The proposed services include performing the site inspection, completing a risk assessment of the project, and preparing the comprehensive assessment report. This work would utilize work products currently being developed under a separate authorization. This letter provides a summary of our proposed work tasks and an estimate of costs to complete these tasks.

FERC released new guidelines for their Part 12D program in December 2021. The new program modifies the previous Part 12D review, and outlines requirements for periodic inspections (PIs) and comprehensive assessments (CAs) that are to be performed alternately on a 5-year cycle. The PI is similar to a consultant safety inspection report (CSIR) completed under the previous Part 12D program. The CA is a more detailed safety review than a PI. One key difference between the new CA and previous Part 12D evaluations is the focus on identifying risk-driving potential failure modes (PFMs) for the structure. The CA process incorporates a level 2 risk assessment (L2RA) that roughly follows the semi-quantitative risk assessment (SQRA) methodology developed by the US Army Corps of Engineers and the Bureau of Reclamation.

The new FERC guidelines outline specific qualifications for personnel performing a CA. The role of the independent consultant (IC) is similar to that under the previous Part 12D program, but the IC is now required to have a very broad technical expertise. It is rare for a single IC to possess the requisite experience in all technical disciplines to meet FERC's requirements. In response to the new regulations most licensees are using a team that includes multiple (typically two) ICs and several subject-specific subject matter experts (SMEs) to prepare a CA. An SME typically has a similar level of experience as an IC, but their role is limited to a specific area of technical analysis necessary to complete the L2RA and CA. The role of the SME is to help the ICs and other members of the team understand the





loading, path to failure, or consequences of dam breach so that the risk can be properly quantified in a risk framework. The L2RA component of the CA requires a risk facilitator and risk analyst to complete the risk evaluation. There are currently very few individuals in the country that have the requisite training and experience to facilitate an L2RA under the new regulations. The results of the L2RA are summarized in a risk report that is included as an appendix to the CA report.

To satisfy the requirements outlined in the new Part 12D program, we propose to team with Gannett Fleming to complete the L2RA and CA reporting. Based on our review of the new FERC guidelines, we plan to execute the inspection using two ICs. This is based on the fact that one IC cannot typically comment on all the engineering disciplines involved for a typical dam safety assessment. For Hosler Dam, we believe that a team of two ICs covering geotechnical/geology and structural engineering would meet the requirements outlined in the Engineering Guidelines. The ICs would require support from SMEs in the fields of hydrology and hydraulics (H&H), engineering geology, and seismicity. The ICs would also be assisted by a dedicated risk facilitator during the L2RA. The facilitator is knowledgeable about dam safety issues and guides the discussion but does not determine risk for individual failure modes.

### **TASK 1 – INITIAL COORDINATION**

The L2RA and CA reporting involve coordinating work between the consultant team, the City, and FERC. The CA is a significant change from the previous Part 12 inspection program the FERC administered. We anticipate portions of the approach will develop based on discussions with FERC as they work through the logistics of the new rules. Our approach will be to present the approach for the CA as outlined below and adjust if necessary, based on FERC's responses. Task 1 includes effort to coordinate work items and schedule to outline deliverables and confirm that the planned approach for the CA meets FERC expectations. Task 1 would also include effort necessary to assemble and disseminate project information from the City's project files to the inspection team.

### **TASK 2 – PART 12 INSPECTION PLAN**

As part of the new CA Report program, FERC requires a Part 12 Inspection Plan document be prepared in advance of the work. The document presents the credentials for the proposed ICs and any subject matter experts that will support the inspection. It also presents the inspection team's understanding of the project, its setting, and any particular concerns that the team will focus on. We propose to use the inspection plan document to lay out the planned logistics for the L2RA and site inspection since these tasks will involve a mix of virtual and in-person workshops. The inspection plan document is typically prepared by the licensee and submitted to FERC. We propose to prepare the text of the document so that the City can submit the plan to FERC on City letterhead. We have budgeted to provide the City with a draft document and revise the draft to address City comments.

For estimating purposes, we have assumed that our team would consist of ICs covering the geotechnical and structural engineering disciplines. Our ICs would be supported by subject matter experts in the fields of H&H, engineering geology, and seismicity. The inspection and L2RA would be facilitated by a three-person risk team; a lead facilitator, a risk analyst, and a note-taker. ICs generally



participate in all aspects of the CA process, while subject matter experts are called on to help inform the risk team on questions related to their specialty.

The Part 12 Inspection Plan document must be submitted to FERC six months before the first planned IC activity. This unusually long lead time facilitates a very detailed review of the qualifications presented for the ICs and SMEs as well as the risk facilitator. FERC will deliver their comments to the licensee and then schedule a second coordination call with the City within 6 weeks of completing their review of the Part 12 Inspection Plan. Once the team for the Part 12 is approved by FERC, the team can begin reviewing documents and analyses of record for the project.

### **TASK 3 – PRE-INSPECTION PREPARATION REPORT**

As part of the new CA Report program, FERC added the pre-inspection preparation report (PIPR) as a required submittal. The PIPR follows a similar outline as the CA report and allows the licensee to demonstrate that the Part 12 team has completed the necessary preparation to conduct the Part 12 inspection. The content of the PIPR is based solely on a review of documents provided by the licensee, but we anticipate that the preliminary conclusions outlined in the PIPR will ultimately be supported by the results of the site inspection and L2RA. Developing the PIPR essentially requires the ICs and subject matter experts to review all the background information for the project and write a preliminary version of the CA report without the required appendices. For estimating purposes, we have assumed that the digital project archive (DPA) for Hosler is complete and cross referenced to the STID.

The PIPR must be submitted at least 30 days before the first IC team activity. FERC will issue comments on the PIPR within two weeks.

### **TASK 4 – SITE INSPECTION AND L2RA**

This task includes effort necessary to perform the inspection of Hosler Dam as well as to conduct the L2RA. Based on recent experience with FERC’s pilot projects for their risk-informed decision-making policy, we propose to conduct this task using a combination of virtual and in-person meetings. A read-ahead package would be prepared for those participating in the L2RA. The first task for the L2RA is similar to a potential failure modes analysis. We propose to brainstorm, screen, and develop potential failure modes (PFMs) during a two-day virtual meeting. After the meeting, the PFMs developed by the group would be consolidated with those already included in the PFMA report (Section 1 of the supporting technical information document). The consolidated list of PFMs would be distributed to L2RA participants for review in advance of the site inspection. For estimating purposes, the PFM brainstorming and screening meeting would be attended by the two ICs, the risk facilitator and risk analyst, and two structural engineers.

We propose to convene the group of L2RA participants at the site to perform an inspection of the facilities. We anticipate that the City would lead this tour similar to how previous Part 12 inspections have been performed. Following the site inspection, the group would convene at the City offices for the L2RA. The L2RA involves reviewing PFMs for the project and evaluating them within a risk-informed framework. The meeting typically begins by outlining the project history for the workshop participants. Probabilistic loading for hydrologic and seismic load cases are presented to the group



along with an assessment of the consequences of dam breach. The overall goal of the L2RA is to identify risk-driving PFMs that control the overall project risk. The L2RA will require support from subject matter experts, so it is helpful if the meeting room has web-conferencing capability. Based on the number of PFMs currently developed for the Hosler Dam development, we anticipate that the bulk of the PFMs for the project could be evaluated in a four-day in-person meeting. For estimating purposes, the L2RA include the two ICs, the risk facilitator and risk analyst, and two structural engineers. The subject matter experts for H&H and seismicity would call-in when needed to provide technical guidance.

In our experience, there are typically several clean-up tasks or items that require additional materials to properly estimate the risk of project PFMs. We recommend budgeting for a one-week virtual meeting to complete the L2RA. Following the virtual meeting, the PFMs discussed are consolidated and summarized in a set of meeting notes. The meeting notes will become an appendix for the risk analysis report (Task 6). For estimating purposes, the L2RA follow-up meeting would involve the same team that attended the in-person meeting at the dam. The subject matter experts for engineering geology, H&H and seismicity would call in as needed.

Once the site inspection and L2RA are completed, the team would begin work preparing the risk report and CA report. The PFMA report for Hosler Dam was updated as a follow-up to the last Part 12 report. For costing purposes, we have assumed that the PFMs developed and tabulated as part of the L2RA would satisfy the requirements outlined in the new FERC guidelines and that a new PFMA report is not necessary for this CA.

### **TASK 5 – COMPREHENSIVE ASSESSMENT REPORT**

The CA report is the FERC deliverable that replaced the Part 12 consultant safety inspection report. The document builds upon the material prepared for the PIPR document (Task 3 above) and is the deliverable that summarizes the opinions and recommendations of the independent consultant team. The CA report would include several required appendices that are not included with the PIPR. Our team would prepare a draft report for the City to review and we would address any comments in a final report that the City could e-file with FERC. We have assumed that the existing PFMA report would be sufficient to include as Appendix I of the CA report. The L2RA workshop will involve developing similar content to that included in the existing PFMA report. In our opinion, a new PFMA report and a new Risk Analysis Report would duplicate efforts and provide little additional value from a dam safety standpoint.

The CA report for Hosler Dam is due to FERC by the end of December 2023. Within 60 days of submitting the CA report, the City and IC team present the conclusions outlined in the CA report to FERC in a virtual meeting (Task 7 below).

### **TASK 6 – RISK ANALYSIS REPORT**

The risk analysis report summarizes the procedures, discussions, and results of the L2RA following the format outlined in FERC's Engineering Guidelines. The purpose of the report is to document the



risk assessment in a way that would allow the City to move to a quantitative risk assessment if necessary. The risk analysis report would ultimately be included as Appendix J in the CA report.

The risk analysis report is typically prepared in parallel with the CA report.

### **TASK 7 – COMPREHENSIVE ASSESSMENT REPORT MEETING**

The new CA program outlines a CA meeting that is to be conducted shortly after the CA report is submitted to FERC. We understand that the CA meeting is a summary of the work and key conclusions that are included in the CA report. We anticipate that the meeting would be a virtual meeting and that approximately two hours should be budgeted. The consultant team would prepare PowerPoint slides for the meeting. The slides for the meeting are submitted to FERC at least 7 before the CA report meeting to give FERC a chance to prepare for the meeting.

As part of Task 7, we have included effort to review comments from FERC on the CA report and help the City prepare responses. If the comments require modest edits that can be completed within the budgeted time, our team would update the CA report accordingly. In the event that FERC's comments require additional analysis, we would assist the City in developing a plan and schedule to address FERC's comment.

### **TASK 8 - PM, COORDINATION AND MEETINGS**

Effort necessary to manage overall project activities, balance staffing resources, coordinate with subconsultants, and prepare budget and status update reports would be included in Task 8. For costing purposes, we have assumed that we would hold four checkpoint meetings with the City during the course of the work. These are intended to be virtual check-ins to revisit progress on deliverables, request any additional information needed by the design team and to outline upcoming work. Task 8 also includes effort to review questions and/or responses from FERC and assist the City with developing a plan and schedule to respond to the comments. Brief written status reports would be provided monthly and would include hours expended by CCI as well as Gannett Fleming.

### **SCHEDULE AND ESTIMATED COST**

Our estimated costs to complete the tasks outlined above is a Not-to-Exceed sum of \$599,000. The total amount would not be exceeded without your prior approval. A breakdown of the costs is provided below. We are prepared to begin work immediately upon receiving Notice-to-Proceed from the City and estimate that we could complete the scope of work by the end of December 2023. We have assumed that this work would be performed under the terms and conditions of our existing contract for Project #2018-15 dated June 6, 2018.

As presented above, the CA report process requires a series of events to be scheduled far in advance. This schedule combined with the limited pool of personnel that meet FERC's requirements for the CA team result in a long schedule. For reference, we have attached the Typical Timeline for a CA that is included in Chapter 16 of FERC's Engineering Guidelines.



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| Task   | Labor    | Subconsultant | Total     |
|--|----------|---------------|-----------|
| Task 1 – Initial Coordination                    | \$7,000  | \$9,000       | \$16,000  |
| Task 2 – Part 12 Inspection Plan                 | \$20,000 | \$13,000      | \$33,000  |
| Task 3 – Pre-Inspection Preparation Report       | \$43,000 | \$70,000      | \$113,000 |
| Task 4 – Site Inspection and L2RA                | \$59,000 | \$182,000     | \$241,000 |
| Task 5 – Comprehensive Assessment Report         | \$59,000 | \$41,000      | \$100,000 |
| Task 6 – Risk Analysis Report                    | \$5,000  | \$53,000      | \$58,000  |
| Task 7 – Comprehensive Assessment Report Meeting | \$9,000  | \$10,000      | \$19,000  |
| Task 8 – PM, Coordination, Reporting             | \$19,000 |               | \$19,000  |
| Not-to-Exceed Total:                             |          |               | \$599,000 |

---

## CLOSING

We appreciate the opportunity to assist the City with this challenging project. If you have any questions related to the proposed scope of work, please call us at (503) 452-1100.

Sincerely,

## CORNFORTH CONSULTANTS, INC.

Gerry M. Heslin  
Vice President

Enclosure: Table 3 from Ch. 16 of FERC Engineering Guidelines

**Table 3: Typical Timeline, Comprehensive Assessment**

| <b>Licensee Activity</b>   | <b>Approximate Time</b>   | <b>FERC Activity</b>  |
|--|---|---|
|  | 18 months before CAR due date   | <b>FERC-RO Issues Part 12D Reminder Letter</b>                          |
| <i>Participates in Initial Coordination Call</i>   | Within 30 days after Reminder Letter is issued  | <i>FERC-RO holds Initial Coordination Call with Licensee</i>            |
| <u>Licensee develops the scope of work, identifies the required disciplines for the IC Team, and identifies one or more people to serve as the IC(s) and facilitator(s), as needed</u> |   |   |
| <b>Submit Part 12D Inspection Plan to FERC-WO</b>  | At least 6 months in advance of the first IC Team activity                              |   |
|  | Within 30 days after submission of the Part 12D Inspection Plan                         | <b>FERC-WO responds to Part 12D Inspection Plan</b>                     |
| <i>Participates in Second Coordination Call</i>  | Within 6 weeks after Approval (or Conditional Approval) of the Part 12D Inspection Plan | <i>FERC-RO holds Second Coordination Call with Licensee and IC Team</i> |
| <u>IC Team performs their review of existing information, prepares the CA-PIPR, and provides it to the Licensee</u>  |   |   |
| <b>Submit CA-PIPR to FERC-RO</b>   | At least 30 days prior to the first IC Team activity                                    |   |
|  | Within 2 weeks after submittal of the CA-PIPR   | <b>FERC-RO Responds to the CA-PIPR</b>                                  |
| <i>Site Inspection</i>   | Date(s) previously coordinated with all parties in advance                              | <i>Attends Site Inspection</i>  |
| <i>PFMA</i>  |   | <i>Attends PFMA</i>   |
| <i>Level 2 Risk Analysis</i>   |   | <i>Attends Level 2 Risk Analysis</i>                                    |
| <u>IC Team prepares the CAR and provides it to the Licensee</u>  |   |   |
| <b>Submit CAR to FERC-RO</b>   | Due Date as stated in the Part 12D Reminder Letter                                      |   |
| <b>Submit CAR Review Meeting Presentation to FERC-RO</b>   | At least 7 days prior to the CAR Review Meeting   |   |
| <i>CAR Review Meeting</i>  | Within 60 days after submitting the CAR   | <i>Attends CAR Review Meeting</i>                                       |
| <b>Submit Plan and Schedule to address IC Recommendations to FERC-RO</b>   | Within 60 days after submitting the CAR   |   |
| <u>FERC reviews the CAR</u>  |   |   |
|  |   | <b>FERC-RO responds to the CAR</b>                                      |

**Bold** text indicates an item that will be submitted to or issued by the FERC.

*Italicized* text indicates an in-person or teleconference activity.

Underlined text that spans across all three columns represents an activity, either by the Licensee, IC Team, or the FERC, that does not require formal communication or coordination.

**REQUEST  
FOR  
QUALIFICATIONS BASED  
PROPOSALS**

**Engineering Services for the Development of  
PROJECT # 2018-15  
FERC INDEPENDENT CONSULTANT FOR PART 12 SAFETY INSPECTION AND DAM  
SAFETY REPORT – HOSLER DAM**

PROJECT NO: 2018-15  
PROJECT TYPE: Engineering Services  
PROPOSALS DUE: MARCH 1, 2018, Not later than 2:00 PM,  
SUBMIT PROPOSALS TO: City of Ashland Public Works -  
Engineering, at 51 Winburn Way,  
Ashland OR 97520;  
or by mail to:  
20 E. Main Street, Ashland, OR 97520  
CITY PROJECT MANAGER: Paula Brown, P.E., Public Works Director  
PROJECT DURATION: Phase 1: FERC Part 12 Safety Inspection  
Report Due November 1, 2018  
Phase 2: Part 12 Services through  
December 1, 2023



**CITY OF  
ASHLAND**

**PUBLIC WORKS ENGINEERING  
20 E. MAIN STREET  
ASHLAND OR 97520  
541/488-5587**





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**ADVERTISEMENT  
CITY OF ASHLAND PUBLIC WORKS – REQUEST FOR PROPOSALS  
PROFESSIONAL ENGINEERING SERVICES**

The City of Ashland (City) is seeking professional services for Project **2018-15 FERC INDEPENDENT CONSULTANT FOR PART 12 SAFETY INSPECTION AND DAM SAFETY REPORT – HOSLER DAM**. This purpose of this project is to meet Federal Energy Regulatory Commission (FERC) requirements related to Part 12 Safety Inspection. The project will include, but is not specifically limited to, the following tasks and phases:

**PHASE 1: COMPLETION OF THE FERC PART 12 D SAFETY INSPECTION.**

Phase 1 of the project will include, but is not specifically limited to, the following tasks:

- Independent Consultant/Lead Investigator must be approved or able to be approved by FERC.
- Engineering evaluation and report on the condition of Hosler Dam in accordance with FERC Part 12 Safety Inspection Guidelines.
- Review of Potential Failure Modes Analysis (PFMA) Report, and resubmittal of PFMA Report to FERC consistent with current format outlined in Chapter 14 of the FERC Engineering Guidelines.
- Submittal to FERC to be completed no later than November 1, 2018.
- Prepare for and make presentations to Engineering Staff and to the City Council as appropriate.
- Provide final report and presentation materials.
- Respond to City and FERC Comments.
- Anticipate completion of Phase 1 within 90 days of submission to FERC.

**PHASE 2: RETAINAGE AS THE APPROVED FERC INDEPENDENT CONSULTANT FOR THE REMAINDER OF THE 5 YEAR PERIOD (through December 1, 2023)**

- Any specific work during this period will be contracted separately.

Proposals must be physically received **MARCH 1, 2018, Not later than 2:00 PM**, (main lobby clock), in the City of Ashland Public Works Engineering Office located at 51 Winburn Way, Ashland OR 97520, or by mail at 20 E. Main Street, Ashland, OR 97520. Proposers mailing proposals should allow normal delivery time to ensure the timely receipt of their proposals. Any proposal received after the date and time set for receipt of proposals will not be considered and will be returned to the proposer unopened. For further information, contact the City's Project Manager, Paula Brown, P.E., Public Works Director at 541/488-5587 or by email at [paula.brown@ashland.or.us](mailto:paula.brown@ashland.or.us). Consultant selection is anticipated to result in the issuance of a contract for engineering services in the form provided in this RFP.

Proposal documents may be downloaded from the Oregon Procurement Information Network (ORPIN). Any addendum that may be issued, relating to this proposal will be available from ORPIN and potential proposers are cautioned to continuously monitor the site for updates and addendum.

All proposals shall be submitted as set forth in Section 7 - Instructions to Proposers. The City is not responsible for proposals submitted in any manner, format, or to any delivery point other than as required by this Solicitation Document. Proposals shall be limited to 8 pages and must include an Oregon Professional Engineer and American Institute of Architecture Architect as key members.

Consultant selection will be based upon weighed criteria as set forth in the Solicitation Document and will include criteria such as (but not limited to): similar project experiences, general experience, staffing availability, schedule and response time.

The City of Ashland reserves the right to reject any and all proposals, to waive formalities or to accept any proposal which appears to serve the best interest of the City of Ashland.

---

Paula C. Brown, PE, Public Works Director

**CITY OF ASHLAND  
DEPARTMENT OF PUBLIC WORKS  
REQUEST FOR PROPOSALS**

**PROJECT NO. 2018-15  
FERC INDEPENDENT CONSULTANT FOR PART 12 SAFETY INSPECTION AND  
DAM SAFETY REPORT – HOSLER DAM**

**SECTION 1 - PROJECT OVERVIEW**

**1.1 Objectives**

The City of Ashland (City) is seeking professional engineering services for Project **2018-15 FERC INDEPENDENT CONSULTANT FOR PART 12 SAFETY INSPECTION AND DAM SAFETY REPORT – HOSLER DAM** in accordance with Federal Energy Regulatory Commission (FERC) Part 12 Safety Inspection Guidelines.

It is anticipated that the same FERC approved engineer will complete both phases of the project. Each phase will be negotiated and awarded separately through the City of Ashland Contract for Personal Services. However, award of Phase I, does not specifically **guarantee** award of Phase 2 to the same engineer, firm or team. If the City so chooses, the City may select a different consultant for subsequent phases through a separate formal selection process.

The project will include, but is not specifically limited to, the following tasks and phases:

**1.1.1 PHASE 1: COMPLETION OF THE FERC PART 12 D SAFETY INSPECTION.**

The project will include but is not specifically limited to the following tasks:

- Independent Consultant/Lead Investigator must be approved or able to be approved by FERC.
- Engineering evaluation and report on the condition of Hosler Dam in accordance with FERC Part 12 Safety Inspection Guidelines.
- Review of Potential Failure Modes Analysis (PFMA) Report, and resubmittal of PFMA Report to FERC consistent with current format outlined in Chapter 14 of the FERC Engineering Guidelines.
- Submittal to FERC to be completed no later than November 1, 2018.
- Prepare for and make presentations to Engineering Staff and to the City Council as appropriate.
- Provide final report and presentation materials.
- Respond to City and FERC Comments.
- Anticipate completion of Phase 1 within 90 days of submission to FERC.

**1.1.2 PHASE 2: RETAINAGE AS THE APPROVED FERC INDEPENDENT CONSULTANT FOR THE REMAINDER OF THE 5 YEAR PERIOD (through December 1, 2023)**

- Any specific work during this period will be contracted separately.

**1.2 Background Information**

Hosler Dam is a variable radius concrete arch dam constructed in 1928 in the Ashland Watershed canyon. It impounds water from both the East and West Forks of Ashland Creek, which have small concrete diversion dam structures on each fork. There are no other major streams or other reservoirs upstream from Hosler Dam. The Ashland Watershed canyon diverts water from Mount Ashland (a peak of 7,533 feet). Hosler Dam, also known as Reeder Gulch, is owned and operated by the City of Ashland's Department of Public Works. The dam is founded on light-gray, medium-grained granite rock of the Ashland Pluton. The original design and evaluations have certified hard, sound, granite with excellent bearing capacity. The dam is constructed of reinforced concrete and the foundations are sound. The dam has been inspected several times in recent years by registered structural engineers and has been certified as structurally sound. Hosler Dam is situated on Ashland Creek in the southwestern part

of the State of Oregon, three miles south of the City of Ashland and approximately 200 miles south of Salem, Oregon. Hosler Dam is 118 feet high and impounds approximately 800 acre-feet of water behind the dam in what is commonly referred to as Reeder Reservoir. Reeder Reservoir is the primary raw water source for the City of Ashland.

The powerhouse is operated by the City of Ashland’s Electric Department in conjunction with the operations at the City’s water treatment plant. The powerhouse was part of the original construction. The current generator was replaced after the 1997 flood. The current configuration utilizes a Pelton wheel turbine with an 810-kW horizontal shaft generator.

### 1.3 Reference Documents

The City has had several safety inspections and has a current safety surveillance and monitoring plan. The most recent “Part 12” was completed by URS (AECOM) Consultants in May 2013; Seventh Independent Consultant Safety Inspection Report. In addition, the City has recently authorized the following work to be completed by AECOM by the end of April 2018:

- Update project rating curve.
- Update erodibility report based upon the revised streampower calculations.
- Update the STID for the PMF analysis to ensure compliance with FERC Chapter 14 *Guidelines for the Evaluation of Hydropower Projects*.

This work will be made available to the selected consultant. As these documents contains critical energy infrastructure information, they are not available for general public release.

## SECTION 2 - SCHEDULE

The schedule of events listed below represent City’s estimated schedule for this request for proposal. This schedule is SUBJECT TO CHANGE and will be adjusted as required.

|    | EVENT  | DAILY COUNT (CALENDAR DAYS)       | DATE      |
|----|--|-----------------------------------|-----------|
| 1. | Request for Proposal Released  | 0                                 | 1/30/2018 |
| 2. | Last Date for Request for changes/Protest for Specifications/Questions | 10 days prior to Proposal Closing | 2/19/2018 |
| 3. | Last Date for City to Post Addenda                                     | 3 days prior to Proposal Closing  | 2/26/2018 |
| 4. | Closing Date (last day to submit Proposals)                            | ~30 days after Proposal Release   | 3/1/2018  |
| 5. | Responses Evaluated  | 15 days after Closing Date        | 3/16/2018 |
| 6. | Interviews Held (if necessary)   | 25+ days after Closing Date       | 3/26/2018 |
| 7. | Intent to Award Announced  | 30 days after Closing Date        | 3/30/2018 |
| 8. | Contract Negotiations  | 40 days after Closing Date        | 4/10/2018 |
| 9. | Expected Project Completion  | 9 months after Contract Award     | 1/10/2019 |

## SECTION 3 - SCOPE OF SERVICES

### 3.1 General Requirements

- Personnel, Materials, & Equipment: The Consultant shall provide qualified and competent personnel and shall furnish all supplies, equipment, tools and incidentals required to accomplish the work. All materials and supplies shall be of good quality and suitable for the assigned work.
- Safety Equipment: The Consultant shall provide and use all safety equipment including, and not limited to hard hats, safety vests and clothing required by State, Federal regulations and Department policies and procedures.

- Professional Responsibilities: The Consultant shall perform the work using the standards of care, skill and diligence normally provided by a professional in the performance of such services in respect to similar work and shall comply will all applicable codes and standards.
- Project Management: The Consultant and the City staff will meet as required during project duration. The objectives of the meeting will include reviewing the scope, budget, schedule and deliverables. The Consultant will organize and manage the consultant project team and coordinate with city project manager and City staff.
- Monthly Invoices and Progress Reports: The Consultant shall prepare monthly invoices and progress reports including the following:
  - Work Completed during the month by work task as a percentage of completion.
  - Needs for Additional Information, Reviews, or Changes to the Scope of Work.
  - Scope, Schedule, and Budget Issues and Changes.

### 3.2 Specific Requirements

The City of Ashland (City) is seeking a professional engineering services for Project 2018-15 FERC Independent Consultant to complete a Part 12 Safety Inspection and Dam Safety Report for Hosler Dam. Hosler Dam and its associated hydroelectric facilities (also known, inclusively, as the Reeder Gulch Project #1107-OR) are regulated by the Federal Energy Regulatory Committee (FERC)

#### 3.2.1 PHASE 1: COMPLETION OF THE FERC PART 12 D SAFETY INSPECTION.

This purpose of this project is to meet Federal Energy Regulatory Commission (FERC) requirements related to Part 12 Safety Inspection. FERC has specific guidelines that must be meet prior to initiating the Part 12 Safety Inspection including approval by FERC of the Independent Consultant.

The project will include but is not specifically limited to the following tasks:

- Independent Consultant/Lead Investigator must be approved or able to be approved by FERC.
- Prepare for and make presentations to Engineering Staff and to the City Council as appropriate.
- Engineering evaluation and report on the condition of Hosler Dam in accordance with FERC Part 12 *Safety Inspection Guidelines*. This will be the eighth Independent Consultant's Safety Report. Prior safety reports will be available once the Independent Consultant is under contract and has been approved by FERC.
- Review the updated project rating curve (to be completed by AECOM not later than April 2018).
- Review the updated erodibility report (to be completed by AECOM not later than April 2018).
- Review the updated STID for the PMF analysis.
- Review the Potential Failure Modes Analysis (PFMA) Report, and resubmit any required PFMA Report to FERC consistent with current format outlined in Chapter 14 of the FERC Engineering Guidelines.
- Review of the PFMA Report will include review of previously identified potential failure modes, evaluation of the assigned categorizations and risk reduction measures, and the full development of any new potential failure modes that may be identified.
- Coordination of the Hosler Dam field inspection and the PFMA review with FERC's Portland Regional Office so that FERC may attend both. For planning purposes it is anticipated that a half-day to one full-day PMFA review with FERC will suffice.
- Submittal to FERC to be completed no later than November 1, 2018.
- Prepare for and make presentations to Engineering Staff and to the City Council as appropriate.
- Provide a final report, along with presentation materials (both digital and print copies).
- Respond to City and FERC Comments.

- Anticipate completion of Phase 1 within 90 days of submission to FERC.

### **3.2.2 PHASE 2: RETAINAGE AS THE APPROVED FERC INDEPENDENT CONSULTANT FOR THE REMAINDER OF THE 5 YEAR PERIOD (through December 1, 2023)**

- The purpose of this phase includes responding to and completing specific tasks required by FERC related to the Part 12 safety inspection. Each task element in Phase 2 will be negotiated and awarded separately through the City of Ashland Contract for Personal Services.

## **SECTION 4 - EVALUATION CRITERIA**

Written proposals will be evaluated and scored and a contract may be awarded based upon the proposer's qualifications and experience as described below:

### **4.1 Project Approach (20 Points Possible)**

Provide a description of your firm's approach to complete a FERC Part 12 Safety Inspection and Dam Safety Report for Hosler Dam. Include a summary of prior partnerships with FERC and city staffs. Include a summary of your quality control program.

### **4.2 Project Experience (20 Points Possible)**

- Describe how your firm is organized and how its resources will be utilized to complete the work.
- Provide a summary of relevant FERC related program experience.
- Provide a concise description of at least three projects in the last 10 years, involving similar work to those listed in the scope of work.
- Indicate which members of the proposed project team, if any, who worked on the example projects, and their involvement. These team members should be included in the Key Persons list submitted in 6.3(b) below.
- Indicate your contingency plan should the FERC approved independent consultant/lead investigator is unable to complete the project.
- Submit references for three of the projects described above. Include the Owners name, organization name, contact name, contact email and phone.

### **4.3 Project Team Experience (30 Points Possible)**

- Provide a description of the proposed organizational structure to be used for the project.
- Provide a list of the key staff proposed for this project ("Key Person(s)"). Be specific on the individual that will be named as the Independent Consultant responsible for FERC compliance. This individual must be approved by FERC prior to any contract execution. Provide a concise summary of each key person(s)'s role, and a description of their relevant experience for this project.
- Submit resumes that support each Key Person's relevant experience. *No more than five resumes should be submitted as Appendix A, and will not count against page limit.*
- Indicate which individual will manage the project and be the primary contact. Indicate the specific experience this individual has managing project similar to the proposed treatment plant outfall project.
- State the estimated proportion of each Key Person's time that will be spent on City's project vs. total time spent on all Key Person's projects during the term of contract.

### **4.4 Proposer's Demonstrated Ability to Successfully Complete Similar Projects on Time and Within Budget (30 Points Possible)**

For each of the three (3) projects listed in response to 6.2(c), provide a discussion of whether the project was completed on time and on budget or needed to be revised. Briefly explain the reason for any revisions, and what attempts were made to bring the project back on schedule and within budget.



#### 4.5 Termination for Default (Pass or Fail)

Proposers shall indicate if they have had a contract terminated for default in the last five years. Termination for default is defined as notice to stop performance that was delivered to the Proposer due to the Proposer's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and determined that the Proposer was in default.

NOTE: If a Proposer has had a contract terminated for default in this period, then the Proposer shall submit full details including the other party's name, address and phone number. City of Ashland will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of past performance.

#### 4.6 Scoring

|    | <b>CATEGORY</b>  | <b>POSSIBLE POINTS</b> | <b>POINTS SCORING</b> |
|----|--|------------------------|-----------------------|
| 1. | Project Approach   | 20                     |                       |
| 2. | Project Experience   | 20                     |                       |
| 3. | Project Team Experience  | 30                     |                       |
| 4. | Demonstrated Ability to Successfully Complete Projects on Time and Within Budget | 30                     |                       |
| 5. | Termination for Default  | <u>P/F</u>             |                       |
|    | Total  | 100                    |                       |

### SECTION 5 - EVALUATION PROCESS AND CONSULTANT SELECTION

Proposals will be reviewed and evaluated by an evaluation committee of reviewers consisting of at least three City employees. The total number of points possible for written proposals is 100 and an additional 100 points may be scored through the interview process.

#### 5.1 Review and Acknowledgment of Defective Proposals

Due to limited resources, City generally will not completely review or analyze proposals that on their faces fail to comply with the minimum mandatory requirements of the solicitation documents nor will City generally investigate the references or qualifications of such proposals. Therefore, City will not acknowledge whether or not an unsuccessful proposal was complete, responsive, responsible, sufficient, or lawful in any respect. This is a public solicitation, the processes and procedures which are established and required by Oregon law and City adopted rules. Proposers are advised to strictly follow the process, procedures, and requirements as set forth in the RFP documents and not anticipate or rely on any opportunity to negotiate, beyond such limitations that are identified herein.

#### 5.2 Right of Rejection

Proposers must comply with all terms of the RFP, City Rules, and all applicable local, state, and federal laws, administrative rules and regulations. The City may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFP.

Proposers may not qualify the proposal nor restrict the rights of City. If a Proposer does so, the City may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

Minor informalities that may be waived include:

- do not affect responsiveness,
- are merely a matter of form or format,
- do not change the relative standing or otherwise prejudice other offers,
- do not change the meaning or scope of the RFP,
- are trivial, negligible, or immaterial in nature,
- do not reflect a material change in the work, or,
- do not constitute a substantial reservation against a requirement or provision.

City reserves the right to refrain from making an award if the City determines that to be in its best interest.

**A proposal from a debarred or suspended Proposer shall be rejected.**

### 5.3 References

City reserves the right to investigate any and all references and the past performance information provided in the proposal with respect to Respondent's successful performance of similar projects, compliance with specifications and contractual obligations, completion or delivery of a project on a schedule, and lawful payment of employees and workers.

City reserves the right to check any and all sources for information and to include sources for information and to include sources other than the references provided in the Proposer's proposal. City may consider information available from any such source including government bodies and regulatory authorities in evaluating respondents.

### 5.4 Responsibility

City reserves the right to investigate and evaluate, at any time prior to award and execution of the Contract, the apparent successful Proposer's responsibility for performing the Contract. Submission of a signed proposal shall constitute approval for City to obtain any information City deems necessary to conduct evaluation. City reserves the right to request additional information or documentation from the successful Proposer prior to award of contract. Such information may include, but is not limited to, current and recent balance sheets, income statements, cash flow statements, or a performance bond from an acceptable surety. Failure to provide this information will result in rescission of City's Intent to Award.

City may postpone the award of Contract after announcement of the apparent successful Proposer in order to complete its investigation and evaluation. Failure of the apparent successful Proposer to demonstrate responsibility shall render the Proposer non-responsible and shall constitute grounds for rejection of the proposal.

### 5.5 Clarification of Response

City reserves the right to request clarification of any item in any proposal, or to request additional information necessary to properly evaluate a particular proposal. All request for clarification and responses shall be in writing.

During the evaluation of Proposals, Proposers must respond to any request for clarification from the Evaluation Committee within 24 hours of request (Monday through Friday). Inability of the Evaluation Committee to reach a Proposer for clarification and/or failure of a Proposer to respond within the time stated may result in rejection of the Proposer's Proposal.

## 5.6 Interviews

The outcome of the proposal evaluations *may* result in placement on an interview (short-listed) with time and date of the interview. Should City elect to hold interviews, the total additional points possible for the interview will be **100**.

City may invite up to three (3) of the highest-ranked firms (or at a natural break in scoring) to interview. The Firm's Key Persons, as identified by City shall be prepared to attend the interview within five (5) business days of notification by City, and shall be prepared to answer questions provided with the Interview Invite letter, and questions that will be provided at the time of the interview, and discuss the Firm's proposed project approach.

## 5.7 Finalist Selection

The firm with the highest total score as a result of written proposal scoring and interview scoring, if conducted, will be considered the Finalist, and all other firms will be ranked according to next highest score, etc.

## 5.8 Ties among Proposers

If City determines after the ranking of potential firms, that two or more of them are equally qualified to be the Finalist, City may select a candidate through any process that the City believes will result in the best value for taking into account the scope, complexity and nature of the Work. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of City and Proposers and shall protect the integrity of the Public contracting process.

As part of the procedure for choosing the Finalist between two or more equally qualified candidates, City may elect to give a preference to a local consulting firm.

## 5.9 Notice of Intent to Award

After the completion of the evaluation and ranking, the City will issue a written Notice of Intent to Award, naming the Finalist, and send copies to all Proposers.

## 5.10 Contract Negotiation

City will begin negotiating the fees for the project, along with expanded scope of work detail, with the highest ranked Proposer and specifically, conduct direct negotiations toward obtaining written agreement on:

- a) Contractor's performance obligations and schedule; and any expansion of the Scope of Work.
- b) Contractor's fees, payment methodology, and a maximum amount payable to Contractor for the Work required under the Contract that is fair and reasonable to City determined solely by City, taking into account the value, scope, complexity and nature of work.
- c) Any other provisions City believes to be in the City's best interest to negotiate.
- d) Initial negotiations will be based upon Contract Phase 1.

City shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if City and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. City may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, as determined solely by City, City may end the particular formal solicitation. Nothing in the rule precludes City from proceeding with a new formal solicitation for the same Work described in the RFP that failed to result in a Contract.

### 5.11 Protest Procedures

City shall provide to all Proposers a copy of the selection notice that City sent to the highest ranked Proposer. A Qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the City. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP.

Eligible Proposers protesting award shall follow the procedures described herein. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Proposers.

- a) Protests must be received within seven (7) days after issuance of the notice of intent to award the Contract. City will not consider late protests.
- b) All protests must be in writing, signed by the protesting party or an authorized Agent. The protest must specify the grounds for the protest to be considered by the City
- c) Protests based on procedural matters will not be considered.
- d) City's Public Works Director will review the protest and will fax and mail the protesting party a written response within three (3) business days of receipt of the written protest to the fax number and address provided in the bid of proposal. Any written response may be comprised of a determination of the protest, a notice to the protesting party of the need for additional time in which to evaluate the matter, or other notice to the protesting party.
- e) If the Public Works Director's determination (response) is adverse to the protester, any further appeal of the Public Works Director's determination by the party must be submitted in writing to the City Administrator within three (3) business days of issuance of the Public Works Director's determination (response).
- f) The City Administrator will review any appeal of the Public Works Director's determination and shall fax and mail, in accordance with the fax number and address provided in the proposal, the protesting party a written response within three (3) business days of receipt of written appeal.
- g) If the determination of the City Administrator is adverse to the protesting party's interest, the protesting party may only appeal to the City Council by filing a written notice of appeal to the Council with the City Administrator within two (2) business days of issuance of the City Administrator's written determination.
- h) The Council, in considering the protest, shall review the documentation presented to the Public Works Director and the City Administrator on the next regularly scheduled Council Meeting, but in no event shall they be required to review in less than ten (10) business days, and thereafter, base their decision on such material. The Council review will be limited to the evaluation of compliance with City's policies and procedures, requirements of the RFP and the equal and fair application of City's contracting rules. The City Council's determination shall be City's final decision.

An adversely affected or aggrieved proposer must exhaust all avenues of administrative remedies before seeking judicial review of City's Consultant selection or Award of Contract decision.

#### 5.12 Resulting Contract

Upon reaching final agreement in regards to fees and final scope of work with an awarded Proposer, City will issue a Personal Services Contract ("PSC"), in substantially the form as found in the Appendix of this RFP document. The PSC will include the City's Standard Terms and Conditions and the final scope of work and fees.

### SECTION 6 - CONTRACT

#### 6.1 Contract Form

The consultant selected by the City will be expected to enter into a written contract in substantially the same form as attached to this RFP. The proposal should indicate acceptance of the City's contract provisions. Suggested reasonable alternatives that do not substantially impair City's rights under the contract may be submitted as outlined under Section 5.11. Unconditional refusal to accept contract provisions will result in proposal rejection.

#### Contract Duration –

- Phase 1: Submittal to FERC to be completed no later than November 1, 2018. Anticipate completion of Phase 1 within 90 days of submission to FERC.
- Phase 2: Retainage as approved FERC IC through December 1, 2023.

Contract Payment – Contingent upon City's need, consultant's performance and availability of approved funding, City reserves the right to amend the contract (within the scope of the project described in this RFP) for additional tasks, project phases and compensation as necessary to complete a particular project. Proposers are advised that the award and potential dollar amount of the contract under this RFP will be contingent upon approval by the Ashland City Council acting as the Contract Review Board.

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with contract requirements and applicable standards. The method of compensation will be determined by the City and may be based upon any one or combination of the following methods:

- Cost plus fixed-fee, up to a maximum NTE amount
- Fixed price for all services. Fixed price per deliverable. Fixed price per milestone
- Time and materials, up to a maximum NTE amount (City preferred method)
- Price per unit

Ashland Living Wage Requirements – Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying at least the living wage as established by the City of Ashland on June 30, 2017 (\$14.81 per hour):

- For all hours worked under a service contract between their employer and the City if the contract exceeds \$20,688.86 or more.
- For all hours worked in a month if the employee spends 50% or more of the employee's time in that month working on a project or portion of business of their employer, if the employer has ten or more employees and has received financial assistance for the project or business from the City in excess of \$20,688.86.
- Contractor is also required to post the notice included in the appendix predominantly in areas where it will be seen by all employees.
- In calculating the living wage for full time employees, employers may add the value of health care, retirement, 401K and IRS eligible cafeteria plans, and other benefits to the employee's

wages. The City of Ashland Living Wage Statement is appended to the sample contract included in the appendix.

## 6.2 Business License Required

The selected consultant must have or acquire a current City of Ashland business license prior to conducting any work under the contact.

## 6.3 Insurance Requirements

Contractor shall at its own expense provide the following insurance:

- a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.
- b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 per occurrence. This is to cover damages caused by any error, omission, or negligent act related to the professional services to be provided under the contract.
- c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 per occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under the contract.
- d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for each accident for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles, as applicable.
- e. 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' written notice from the contractor or its insurer(s) to the City.

Additional Insured/Certificates of Insurance. Contractor shall name The City of Ashland, Oregon, and its elected officials, officers and employees as additional insurers on any insurance policies required herein but only with respect to contractor's services to be provided under this contract. As evidence of the insurance coverage required by this contract, the contractor shall furnish acceptable insurance certificates prior to commencing work under this contact. The certificate will specify all of the parties who are additional insures. The consultant's insurance is primary and non-contributory. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The contractor shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance.

## 6.4 Laws and Regulations

The proposer is assumed to be familiar with all Federal, State, County or City laws or regulations, which in any manner affect those engaged or employed in the work or the materials or equipment used or which in any way affect the conduct of the work, and no pleas of misunderstanding will be considered on account of ignorance thereof. If the proposer shall discover any provision in these specifications or project information, plans or contract documents which is contrary to or inconsistent with any law or regulations, they shall report it to the City of Ashland in writing.

All work performed by the contractor shall be in compliance with all Federal, State, County and local laws, regulations and ordinances. Unless otherwise specified, the contractor shall be responsible for applying for applicable permits and licenses.

## SECTION 7 - INSTRUCTIONS TO PROPOSERS

### 7.1 General

All proposals and any resulting contracts are subject to the provision and requirements of Oregon Revised Statutes, Sections 279A and 279B. Engineering contracts are further subject to 279C and to the City of Ashland (City) Municipal Code Section 2.50.

### 7.2 Information of Record

This Request for Proposal (RFP) will be distributed through the Oregon Procurement Information Network (ORPIN). All updates, addendum, and related communications will be published through ORPIN. All prospective proposers are advised to continuously monitor the website for information regarding this proposal. It is the sole responsibility of the proposer to check the website on a timely basis for critical information regarding the proposal.

### 7.3 Proposal Preparation and Format

- Proposals shall be typewritten 12 point font minimum.
- Except for proposer attachments, proposal form and resumes, the proposal shall contain no more than 8 pages.
- Proposal narrative must follow along with scoring criteria sections
- No oral, telegraphic, telephone or facsimile proposals shall be accepted.
- The electronic submission of a proposal will not be permitted.
- To be considered, all proposals must be received by the City prior to the hour and date of the advertised proposal closing.
- A total of six originals (wet signatures), and complete proposals shall be submitted to the City prior to the advertised proposal closing date.
- 1 digital copy of all submitted documents on CD or thumb drive.

### 7.4 Signature on Proposal

Proposals shall be signed in ink by an authorized representative of the Proposer. Signature on a proposal certifies that the proposal is made without connection with any person, firm or corporation making a proposal for the same goods and/or services and is in all respects fair and made without collusion or fraud. Signature on a proposal also certifies that the Proposer has read, fully understands and agrees with all solicitation requirements, terms and conditions. No consideration will be given to any claim resulting from proposing without fully comprehending all requirements of the Request for Proposals.

### 7.5 Preparation Costs

The City may cancel a solicitation, whether informal or formal, or reject all proposals, without liability incurred by City at any time after issuing an RFP, if City believes it is in City's interest to do so. Consultants responding to RFPs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFPs, which includes, but is not limited to: submittal preparation, submittal, travel expenses, interviews, presentations, or evaluation of any proposal.

### 7.6 Conformance to Solicitation Requirements

Proposals shall conform to the requirements of the Request for Proposals. All necessary attachments (Bidder Residency information, Independent Contractor Certification, etc.) shall be submitted with the proposal and in the required format. Failure to comply with all requirements may result in proposal rejection.

### 7.7 Definitions

For the purpose of this RFP:

**“Agency” or “City”** means City of Ashland.

**“Business days”** means calendar days, excluding Saturdays, Sundays and all City recognized holidays.

**“Calendar days”** or **“days”** means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State holiday or other day.

**“Council”** means City of Ashland Council

**“Department”** means the City of Ashland Engineering Department

**“Manager”** means the City of Ashland Project Manager

**“Proposers”**- All firms submitting Proposals are referred to as Proposers in this document; after negotiations, an awarded Proposer will be designated as “Consultant”.

**“Qualification Based Selection”** or **“QBS”** (for the purposes of this RFP) means evaluations and scoring of proposals based on qualifications, experiences and project approach, without considering cost.

**“RFP”** means Request for Proposal.

**“RFQ”** means Request for Qualifications.

**“Scope of Work”** means the general character and range of services and supplies needed to complete the work’s purpose and objectives, and an overview of the performance outcomes expected by Agency.

**“Services”** means the services to be performed under the Contract by the Consultant.

**“Statement of Work”** means the specific provision in the final Contract which sets forth and defines in detail (within the identified Scope of Work) the agreed-upon objectives, expectations, performance standards, services, deliverables, schedule for delivery and other obligations.

## 7.8 Questions and Clarifications

All inquiries, whether relating to the RFP process, administration, deadline or award, or to the intent or technical aspects of the services, must be submitted in writing to the City’s Project Manager listed in the advertisement for this RFP, at 20 East Main Street, Ashland, Oregon 97520. All questions must be received not later than ten (10) calendar days prior to the date and time set for closing.

Answers to questions received by City, which are deemed by City to be substantive, will be issued as official addenda to this RFP to ensure that all proposers base their proposals on the same information. When appropriate, as determined by City in its sole discretions, revisions, substitution or clarification of the RFP or attached terms and conditions, an official addendum to this RFP will be issued. Proposer shall indicate receipt of all issued addenda by indicating the number of addendum received on the Proposal Form.

Any addendum or addenda issued by the City which may include changes, corrections, additions, interpretations or information, and issued seventy-two (72) hours or more before the scheduled closing time for submission of bids, Saturday, Sunday and legal holidays not included, shall be binding upon the proposer. The City may elect to email addendum to registered proposers but will do so as a courtesy only. All official addendums will be issued through ORPIN and it shall be the proposer’s sole responsibility to acquire any and all addendum pertaining to RFP. The proposer is strongly cautioned to monitor this site on a continual basis.

## 7.9 Protest of Requirements

Proposers may submit a written protest of any provision, specification or contract term contained in this RFP and may request a change to any provision, specification or contract term contained in this RFP, not later than ten (10) calendar days prior to the advertised proposal closing date.

A proposer’s written protest must meet the following requirements:

- A detailed statement of the legal and factual grounds for the protest.
- The reason for the protest or request for change.



- A statement of the form of relief requested or any proposed changes to the specifications or contract document.

All protests shall be mailed or otherwise delivered to the City marked as follows:

PROPOSAL PROTEST

Proposal No. **2018-15**

City of Ashland Public Works Dept.

ATTN: Paula Brown, P.E., Public Works Director

20 East Main St

Ashland, OR 97520

City Response: The City may reject without consideration a proposer's protest after the deadline established for submitting protest. The City shall provide notice to the applicable proposer if it entirely rejects a protest. If the City agrees with the proposer's protest, in whole or in part, the City shall either issue an addendum reflecting its determination or cancel the solicitation.

Extension of Closing: If the City receives a written protest from a proposer in accordance with this rule, the City may extend closing if the City determines an extension necessary to consider the protest and to issue addenda, if any, to the solicitation of document.

Judicial review of the City's decision relating to a specification protest shall be in accordance with ORS. 279B.405.

#### 7.10 Protest of Contract Award

Every proposer who submits a proposal shall be notified of its selection status. Any proposer who claims to have been adversely affected or aggrieved by the selection or any proposer who contends that the provisions of the RFP or any aspect of the procurement process has promoted favoritism in the award of the contract or has substantial diminished competition, must file a written protest to the RFP within seven (7) calendar days after the date of the selection notice. Failure to file a protest will be deemed a waiver of any claim by an offeror that the procurement process violates any provision of ORS Chapter 279A, 279B, 279C the City of Ashland Local Contract Review Board Rules or the City's procedures for screening and selection of persons to perform personal services.

#### 7.11 Proposal Modification

Modifications or erasures made before proposal submission shall be initialed in ink by the person signing the proposal. Proposals, once submitted, may be modified in writing before the time and date set for proposal closing. Any modification shall be prepared on company letterhead, shall be signed by an authorized representative, and shall state that the new document supersedes or modifies prior proposal submissions and any other prior proposal modifications. Proposal modifications shall be submitted in a sealed envelope clearly marked "Proposal Modification," identifying the RFP number and closing date and time. Proposers may not modify proposals after proposal closing date and time.

#### 7.12 Proposal Withdrawals

Proposals may be withdrawn in writing on company letterhead signed by an authorized representative and received by the Engineering Services Manager prior to the RFP closing time. Proposals may be withdrawn in person before closing time upon presentation of appropriate identification.

#### 7.13 Proprietary Information

The City is subject to the Oregon Public Law (ORS 192.410 to 192.505), which require the City to disclose all records generated or received in the transaction of City business, except as expressly exempted in ORS 192.501, 192.502, or other applicable law. Examples of exemptions that could be relevant include trade secrets (ORS 192.50 (2)) and computer programs (ORS 192.501(15)). The City will not disclose

records submitted by a Proposer that are exempt from disclosure under the Public Records Law, subject to the following procedures and limitations.

The entire RFP cannot be marked confidential; nor shall any pricing be marked confidential.

All pages containing the records exempt from disclosure shall be marked “confidential” and segregated in the following manner:

- It shall be clearly marked in bulk and on each page of the confidential document.
- It shall be kept separate from the other RFP documents in a separate envelope or package
- Where the specification conflicts with other formatting and response instruction specifications, this specification shall prevail.
- Where such conflict occurs, the Proposer is instructed to respond with the following: “Refer to confidential information enclosed.”
- This statement shall be inserted in the place where the requested information was to have been placed.

Proposers who desire that additional information be treated as confidential must mark those pages as “confidential”; cite as a specific statutory basis for the exemption, and the reasons why the public interest would be served by the confidentially. Should a proposal be submitted as described in this section no portion of it can be held as confidential unless that portion is segregated as described in the criteria above.

Notwithstanding the above procedures, the City reserves the right to disclose information that the City determines, in its sole discretion, is not exempt from disclosure or that the City is directed to disclose by the City’s Attorney, the District Attorney, or a court of competent jurisdiction. Prior to disclosing such information, the City will notify the Proposer. If the Proposer disagrees with the City’s decision, the City may, but is not required to, enter into an agreement not to disclose the information so long as the Proposer bears the entire cost, including reasonable attorney’s fees, of any legal action, including any appeals, necessary to defend or support a no-disclosure decision.

#### 7.14 Terms and Conditions

Unless an official addendum has modified or reserved the right to negotiate any terms contained in the contract or exhibits thereto, City will not negotiate any term or condition after the protest deadline, except the statement of work, pricing and calendar with the selected proposer. By proposal submission, the selected proposer agrees to be bound by the terms and conditions as set forth in this RFP and as they may have been modified or reserved by City for negotiation. Any proposal that is received conditioned upon City’s acceptance of any other terms and conditions or rights to negotiate will be rejected.

#### 7.15 Proposal Opening

Unless otherwise provided by Law or Rule, proposals received in response to this Request for Proposals shall be publicly opened at scheduled closing date and time at the Engineering Services Building at 51 Winburn Way, Ashland, Oregon 97520. Proposers who attend the RFP opening shall be informed only of the names of the Proposers submitting proposals. No other information shall be available and no copies of the proposals shall be made. Award decisions will NOT be made at the opening.

**SECTION 8 - PROPOSAL FORM**

Proposals should be prepared and organized in a clear and concise manner, and must include all information required by RFP. Headers, Titles or Tabs should be used to identify required information. Responses to the Evaluation Criteria found in Section 6 shall be organized in the same order listed in that Section, preferably by re-stating the Criteria, then responding below.

**REQUIRED RESPONSE DOCUMENTS**

THE FOLLOWING INFORMATION MUST BE RETURNED WITH YOUR RESPONSE:

(Place a check in front of the item indicating inclusion in your response)

- RESPONSE TO ALL EVALUATION CRITERIA listed in Section 6
- SECTION 8 – Proposal Form
- Bidder Residency Information
- Independent Contractor Certification

**MWESB INFORMATION**

City encourages contracting with minority owned, woman owned, and emerging small business (MWESB). The State of Oregon offers a certification process. Indicate below if your business is a MWESB and if so, which categories have been state certified. MWESB certified? Yes \_\_\_ No \_\_\_. If yes, indicate which categories below:

Minority Owned \_\_\_ Woman Owned \_\_\_ Emerging Small Business \_\_\_ Veteran Owned \_\_\_

**ACKNOWLEDGMENT OF RECEIPT OF ADDENDA TO PROPOSAL DOCUMENTS:**

Proposer acknowledges receipt of Addenda and agrees to be bound by their contents.

**Circle each RFP addendum received: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10**

**Check if not applicable or no addenda were received: \_\_\_**

**OSBEELS / OSBGE / ORBAE No.(s)**

Provide name(s), title(s), and certification number(s) for each Key Person listed under Section 6.3 (b). Attach additional sheet if necessary)

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Certification No: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Certification No: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Certification No: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Certification No: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Certification No: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Certification No: \_\_\_\_\_

**PROPOSER INFORMATION:**

\_\_\_\_\_  
Proposer Company Name

\_\_\_\_\_  
Company Address (from which work will be performed)

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
FEDERAL ID NUMBER

Person Signing RFP \_\_\_\_\_ Title \_\_\_\_\_

Signature: \_\_\_\_\_

Email Address: \_\_\_\_\_

APPENDIX A – **CONTRACT FORM INCLUDING EXHIBIT A,**  
APPENDIX B – **FORM W-9**  
APPENDIX C – **CITY OF ASHLAND LIVING WAGE**

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## Contract for Personal Services

|   |  |
|---|--|
| <p><b>CITY OF<br/>ASHLAND</b></p> <p>20 East Main Street<br/>Ashland, Oregon 97520<br/>Telephone: 541/488-6002<br/>Fax: 541/488-5311</p>  | <p>CONSULTANT:</p> <p>CONTACT:</p> <p>ADDRESS:</p> <p>TELEPHONE:</p> <p>EMAIL:</p> |
| <p>EFFECTIVE DATE:</p>  | <p>TERM/COMPLETION DATE:</p>   |
| <p>NOT TO EXCEED AMOUNT:</p>  |  |
| <p>SERVICES TO BE PROVIDED:</p>   |  |
| <p>ADDITIONAL TERMS:</p> <p>In the event of conflicts or discrepancies among the contract documents, the City of Ashland Contract for Personal Services will be primary and take precedence, and any exhibits or ancillary contracts or agreements having redundant or contrary provisions will be subordinate to and interpreted in a manner that will not conflict with the said primary City of Ashland Contract.</p>  |  |
| <p>FINDINGS:</p> <p>Pursuant to AMC 2.50.120, after reasonable inquiry and evaluation, the undersigned Department Head finds and determines that: (1) the services to be acquired are personal services; (2) the City does not have adequate personnel nor resources to perform the services; (3) the statement of work represents the department's plan for utilization of such personal services; (4) the undersigned consultant has specialized experience, education, training and capability sufficient to perform the quality, quantity and type of work requested in the scope of work within the time and financial constraints provided; (5) the consultant's proposal will best serve the needs of the City; and (6) the compensation negotiated herein is fair and reasonable.</p> <p>NOW THEREFORE, in consideration of the mutual covenants contained herein the CITY AND CONSULTANT AGREE as follows:</p> <ol style="list-style-type: none"> <li>1. <b>Findings / Recitations.</b> The findings and recitations set forth above are true and correct and are incorporated herein by this reference.</li> <li>2. <b>All Costs by Consultant:</b> Consultant shall, at its own risk and expense, perform the personal services described above and, unless otherwise specified, furnish all labor, equipment and materials required for the proper performance of such service.</li> <li>3. <b>Qualified Work:</b> Consultant has represented, and by entering into this contract now represents, that all personnel assigned to the work required under this contract are fully qualified to perform the service to which they will be assigned in a skilled and worker-like manner and, if required to be registered, licensed or bonded by the State of Oregon, are so registered, licensed and bonded.</li> <li>4. <b>Completion Date:</b> Consultant shall start performing the service under this contract by the beginning date indicated above and complete the service by the completion date indicated above.</li> <li>5. <b>Compensation:</b> City shall pay Consultant for service performed, including costs and expenses, the sum specified above. Payments shall be made within 30 days of the date of the invoice. Should the contract be prematurely terminated, payments will be made for work completed and accepted to date of termination.</li> <li>6. <b>Ownership of Documents:</b> All documents prepared by Consultant pursuant to this contract shall be the property of City.</li> <li>7. <b>Statutory Requirements:</b> ORS 279C.505, 279C.515, 279C.520 and 279C.530 are made part of this contract.</li> <li>8. <b>Living Wage Requirements:</b> If the amount of this contract is \$20,688.86 or more, Consultant is required to comply with chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in this chapter, to all employees performing work under this contract and to any Subcontractor who performs 50% or more of the service work under this contract. Consultant is also required to post the notice attached hereto as Exhibit B predominantly in areas where it will be seen by all employees.</li> <li>9. <b>Indemnification:</b> Consultant agrees to defend, indemnify and save City, its officers, employees and agents harmless from any and against all losses, claims, actions, costs, expenses, judgments, subrogations, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, of whatsoever nature arising out of or incident to the performance of this contract by Consultant (including but not limited to, Consultant's employees, agents, and others designated by Consultant to perform work or services attendant to this contract). Consultant shall not be held responsible for any losses, expenses, claims, subrogations, actions, costs, judgments, or other damages, directly, solely, and proximately caused by the negligence of City.</li> <li>10. <b>Termination:</b></li> </ol> |  |

- a. Mutual Consent. This contract may be terminated at any time by the mutual written consent of both parties.
- b. City's Convenience. This contract may be terminated at any time by City upon not less than 30 days' prior written notice delivered by certified mail or in person.
- c. For Cause. City may terminate or modify this contract, in whole or in part, effective upon delivery of written notice to Consultant, or at such later date as may be established by City under any of the following conditions:
  - i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
  - ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract; or
  - iii. If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this contract is for any reason denied, revoked, suspended, or not renewed.
- d. For Default or Breach.
  - i. Either City or Consultant may terminate this contract in the event of a breach of the contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, or within such other period as the party giving the notice may authorize or require, then the contract may be terminated at any time thereafter by a written notice of termination by the party giving notice.
  - ii. Time is of the essence for Consultant's performance of each and every obligation and duty under this contract. City by written notice to Consultant of default or breach may at any time terminate the whole or any part of this contract if Consultant fails to provide services called for by this contract within the time specified herein or in any extension thereof.
  - iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- e. Obligation/Liability of Parties. Termination or modification of this contract pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to subsections a, b, c or d of this section, Consultant shall immediately cease all activities under this contract, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Consultant shall deliver to City all contract documents, information, works-in-progress and other property that are or would be deliverables had the contract been completed. City shall pay Consultant for work performed prior to the termination date if such work was performed in accordance with the Contract.

- 11. **Independent Contractor Status:** Consultant is an independent contractor and not an employee of the City. Consultant shall have the complete responsibility for the performance of this contract. Consultant shall provide workers' compensation coverage as required in ORS Chapter 656 for all persons employed to perform work pursuant to this contract. Consultant is a subject employer that will comply with ORS 656.017.
- 12. **Assignment and Subcontracts:** Consultant shall not assign this contract or subcontract any portion of the work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Consultant shall be fully responsible for the acts or omissions of any assigns or Subcontractors and of all persons employed by them, and the approval by City of any assignment or subcontract shall not create any contractual relation between the assignee or subcontractor and City.
- 13. **Default.** The Consultant shall be in default of this agreement if Consultant: commits any material breach or default of any covenant, warranty, certification, or obligation it owes under the Contract; its QRF status pursuant to the QRF Rules or loses any license, certificate or certification that is required to perform the Services or to qualify as a QRF if consultant has qualified as a QRF for this agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in its obligations under the Contract; or attempts to assign rights in, or delegate duties under, the Contract.
- 14. **Insurance.** Consultant shall at its sole expense provide the following types of insurance:
  - a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers
  - b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence. This is to cover damages caused by any error, omission or negligent act related to the professional services to be provided under this Contract.
  - c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence for Bodily Injury and Property Damage.
  - d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

e. 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' written notice from the Consultant or its insurer(s) to the City.

f. Additional Insured/Certificates of Insurance. Consultant shall name The City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies, excluding Professional Liability and Workers' Compensation, required herein, but only with respect to Consultant's services to be provided under this Contract. The consultant's insurance is primary and non-contributory. As evidence of the insurance coverages required by this Contract, the Consultant shall furnish acceptable insurance certificates prior to commencing work under this contract. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

15. **Governing Law; Jurisdiction; Venue:** This contract shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between the City (and/or any other or department of the State of Oregon) and the Consultant that arises from or relates to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. If, however, the 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 filed in Jackson County, Oregon. Consultant, by the signature herein of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts. In no event shall this section be construed as a waiver by City of any form of defense or immunity, based on the Eleventh Amendment to the United States Constitution, or otherwise, from any claim or from the jurisdiction.

16. THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. 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. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONSULTANT, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

17. **Nonappropriations Clause.** Funds Available and Authorized: City has sufficient funds currently available and authorized for expenditure to finance the costs of this contract within the City's fiscal year budget. Consultant understands and agrees that City's payment of amounts under this contract attributable to work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable administrative discretion, to continue to make payments under this contract. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this contract without penalty or liability to City, effective upon the delivery of written notice to Consultant, with no further liability to Consultant.

**Certification.** Consultant shall sign the certification attached hereto as Exhibit A and herein incorporated by reference.

|  |            |                          |                 |
|--|------------|--------------------------|-----------------|
| <b>Consultant:</b>   |            | <b>City of Ashland</b>   |                 |
| By _____   | Signature  | By _____                 | Department Head |
| _____  | Print Name | _____                    | Print Name      |
| _____  | Title      | _____                    | Date            |
| W-9 One copy of a W-9 is to be submitted with the signed contract. |            | Purchase Order No. _____ |                 |



## EXHIBIT A

**CERTIFICATIONS/REPRESENTATIONS:** Contractor, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Contractor is not subject to backup withholding because (i) it is exempt from backup withholding or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Contractor further represents and warrants to City that (a) it has the power and authority to enter into and perform the work, (b) the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (c) the work under the Contract shall be performed in accordance with the highest professional standards, and (d) Contractor is qualified, professionally competent and duly licensed to perform the work. Contractor also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, it is an independent Contractor as defined in the contract documents, it is authorized to do business in Oregon, it is authorized to act on behalf of the City, and Contractor has checked four or more of the following criteria that apply to its business.

- \_\_\_\_\_ (1) I carry out the labor or services at a location separate from my residence or is in a specific portion of my residence, set aside as the location of the business.
- \_\_\_\_\_ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
- \_\_\_\_\_ (3) Telephone listing is used for the business separate from the personal residence listing.
- \_\_\_\_\_ (4) Labor or services are performed only pursuant to written contracts.
- \_\_\_\_\_ (5) Labor or services are performed for two or more different persons within a period of one year.
- \_\_\_\_\_ (6) I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

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Contractor \_\_\_\_\_ (Date)

EXHIBIT B

City of Ashland

LIVING

WAGE

ALL employers described below must comply with City of Ashland laws regulating payment of a living wage.

\$14.81 per hour, effective June 30, 2017.

The Living Wage is adjusted annually every June 30 by the Consumer Price Index.



Employees must be paid a living wage:

- For all hours worked under a service contract between their employer and the City of Ashland if the contract exceeds \$20,688.86 or more.
For all hours worked in a month if the employee spends 50% or more of the employee's time in that month

working on a project or portion of business of their employer, if the employer has ten or more employees, and has received financial assistance for the project or business from the City of Ashland in excess of \$20,688.86.

- If their employer is the City of Ashland, including the Parks and Recreation Department.
In calculating the living wage,

employers may add the value of health care, retirement, 401K and IRS eligible cafeteria plans (including childcare) benefits to the amount of wages received by the employee.

- Note: For temporary and part-time employees, the Living Wage does not apply to the first 1040 hours worked in any calendar year. For more details, please see Ashland Municipal Code Section 3.12.020.

For additional information:

Call the Ashland City Administrator's office at 541-488-6002 or write to the City Administrator, City Hall, 20 East Main Street, Ashland, OR 97520, or visit the City's website at www.ashland.or.us

Notice to Employers: This notice must be posted predominantly in areas where it can be seen by all employees.



## Request for Taxpayer Identification Number and Certification

**Give Form to the  
requester. Do not  
send to the IRS.**

|   |  |  |
|---|--|--|
| Print or type<br>See Specific Instructions on page 2. | Name (as shown on your income tax return)  |  |
|   | Business name/disregarded entity name, if different from above   |  |
|   | Check appropriate box for federal tax classification:<br><input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate<br><br><input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____<br><br><input type="checkbox"/> Other (see instructions) ▶ _____ | Exemptions (see instructions):<br><br>Exempt payee code (if any) _____<br><br>Exemption from FATCA reporting code (if any) _____ |
|   | Address (number, street, and apt. or suite no.)  | Requester's name and address (optional)  |
|   | City, state, and ZIP code  |  |
| List account number(s) here (optional)                |  |  |

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

|                                       |  |  |   |  |  |  |   |  |  |  |
|---------------------------------------|--|--|---|--|--|--|---|--|--|--|
| <b>Social security number</b>         |  |  |   |  |  |  |   |  |  |  |
|                                       |  |  |   |  |  |  |   |  |  |  |
|                                       |  |  | - |  |  |  | - |  |  |  |
| <b>Employer identification number</b> |  |  |   |  |  |  |   |  |  |  |
|                                       |  |  |   |  |  |  |   |  |  |  |
|                                       |  |  | - |  |  |  |   |  |  |  |

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

|                  |                            |        |
|------------------|----------------------------|--------|
| <b>Sign Here</b> | Signature of U.S. person ▶ | Date ▶ |
|------------------|----------------------------|--------|

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** The IRS has created a page on [www.irs.gov/w9](http://www.irs.gov/w9) for information about Form W-9, at [www.irs.gov/w9](http://www.irs.gov/w9). Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

**APPENDIX D – CERTIFICATION REGARDING LOBBYING**

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## CERTIFICATION REGARDING LOBBYING

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Applicants must review the requirements for certification regarding lobbying included in the regulations cited below before completing this form. Applicants must sign this form to comply with the certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying." This certification is a material representation of fact upon which the Department of Education relies when it makes a grant or enters into a cooperative agreement.

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As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a Federal contract, grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than 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 in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants and contracts under grants and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certification.

|   |                                       |
|---|---------------------------------------|
| NAME OF APPLICANT                                   | PR/AWARD NUMBER AND / OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE |                                       |
| SIGNATURE   | DATE                                  |

FEDERAL ENERGY REGULATORY COMMISSION  
Office of Energy Projects  
Division of Dam Safety and Inspections – Portland Regional Office  
805 SW Broadway, Suite 550  
Portland, Oregon 97205  
(503) 552-2700

5/23/2022

In reply refer to:  
P-1107

VIA Electronic Mail

Mr. Scott Fleury  
Public Works Director  
City of Ashland  
scott.fleury@ashland.or.us

Subject: Ninth Part 12D Report, for a Comprehensive Assessment of the Hosler Development, Reeder Gulch Project, is due by December 31, 2023

Dear Mr. Fleury:

This letter is to inform you that the Ninth Part 12D Independent Consultant's Safety Inspection Report (Part 12D Report) for the Hosler Development of the Reeder Gulch Project, FERC No. 1107, is due to be submitted to this office by December 31, 2023.

**This letter contains important information about the required scope and contents of the Part 12D Report and reflects changes to the Commission's regulations that were implemented by Order 880 and went into effect on April 11, 2022. We encourage you to read this letter in its entirety, as well as the regulations and associated Guidelines.**

### **General Requirements**

Code of Federal Regulations (CFR) Title 18, Part 12, Subpart D establishes the Commission's Independent Consultant (IC) Inspection Program, also referred to as the Part 12D Program, and prescribes the scope of inspections, reports, qualifications of Independent Consultant Team (IC Team) personnel, and related procedures.<sup>1</sup> The Part 12D Program is implemented by the Commission's Office of Energy Projects, Division of Dam Safety and Inspections (D2SI). Chapter 16 of the Commission's Engineering

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<sup>1</sup> <https://www.ecfr.gov/on/2022-04-11/title-18/chapter-I/subchapter-B/part-12/subpart-D>

Guidelines for the Evaluation of Hydropower Projects (Engineering Guidelines) provides additional information related to the Part 12D Program.<sup>2</sup>

The list below shows several key components and deliverables that are required for this inspection:

- For the Ninth Part 12D Inspection, the IC Team must perform a **Comprehensive Assessment** (CA) as defined in 18 CFR § 12.31(f) and described in 18 CFR § 12.37.
  - The scope of a CA includes a **Potential Failure Modes Analysis** (PFMA) conducted in accordance with the guidance in Chapter 17 of the Engineering Guidelines.<sup>3</sup>
  - The scope of the CA also includes a **Level 2 Risk Analysis** (L2RA) conducted in accordance with Chapter 18 of the Engineering Guidelines.<sup>4</sup>
- You must provide a **Part 12D Inspection Plan** in advance, including an **IC Team Proposal**, and obtain written approval from the Director, D2SI in advance of the Part 12D Inspection, as described in 18 CFR § 12.34.
- The IC Team must prepare a preliminary report, referred to as a **CA-Pre-Inspection Preparation Report** (CA-PIPR). The CA-PIPR must be submitted at least 30 days in advance of the first IC Team activity, as described in 18 CFR § 12.42. Appendix 16-E of the Engineering Guidelines provides an outline for the CA-PIPR.
- The IC Team must document their findings in a final Part 12D Report, specifically a **Comprehensive Assessment Report** (CAR), which is described in 18 CFR § 12.38. The CAR must be submitted by December 31, 2023. Appendix 16-D of the Engineering Guidelines provides an outline for the CAR.
- The IC Team is to present their findings to Licensee and Commission staff during a **CA Review Meeting**, as described in Section 16-7.5 of the Engineering Guidelines.
- You must provide a **plan and schedule for corrective measures** to address the IC Team's recommendations, as required by 18 CFR § 12.41 and further described in Section 16-7 of the Engineering Guidelines.

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<sup>2</sup> [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20211216-3085](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20211216-3085)

<sup>3</sup> [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20211216-3086](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20211216-3086)

<sup>4</sup> [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20211216-3088](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20211216-3088)

### **Project Development(s) Requiring Inspection**

The applicability of 18 CFR Part 12, Subpart D is based on project developments as defined in 18 CFR 12.3(b)(7). A project development comprises “an impoundment and its associated dams, forebays, water conveyance facilities, power plants, and other appurtenant facilities.” For this CA, the following project developments require inspection:

- Hosler Development

### **Timeline of Activities**

The table below shows the timing of some major milestones in the CA process. Shortly after issuance of this letter, Commission staff will contact you to schedule the initial coordination call; Enclosure 1 provides an agenda for that call.

| <b>Milestone</b>   | <b>Timing</b>  |
|--|--|
| Initial Coordination Call<br>( <i>Licensee and FERC</i> )                  | Within approximately 30 days of the date of this letter                            |
| Submit the Part 12D Inspection Plan to the FERC                            | 180 days in advance of the first IC Team activity (field inspection or PFMA/L2RA)  |
| Second Coordination Call<br>( <i>Licensee, IC Team, and FERC</i> )         | Within approximately 6 weeks after approval or conditional approval of the IC Team |
| Submit the CA-PIPR to FERC   | At least 30 days before the first IC Team activity (field inspection or PFMA/L2RA) |
| Field inspection, PFMA, and L2RA<br>( <i>Licensee, IC Team, and FERC</i> ) | <i>Dates as scheduled in the Part 12D Inspection Plan</i>                          |
| Submit the CAR to FERC   | December 31, 2023  |
| CA Review Meeting  | Within 60 days after the CAR is submitted  |
| Submit the plan and schedule to address the IC Team’s recommendations      | Within 60 days after the CAR is submitted  |

### **Approval of the Independent Consultant Team and the Part 12D Inspection Plan**

You are required to submit a Part 12D Inspection Plan at least 180 days in advance of the first IC Team activity; since you are to perform a Comprehensive Assessment, the first activity may be either the site inspection or PFMA/L2RA.<sup>5</sup> The Part 12D Inspection Plan must describe the scope and schedule of the inspection activities and include an IC Team Proposal, which must:

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<sup>5</sup> 18 CFR § 12.34(b)



- Identify the required technical disciplines for IC(s) and supporting team members;
- Identify the proposed IC(s) and demonstrate that they meet the requirements of 18 CFR § 12.31(a);
- Identify any facilitator(s) for the PFMA and L2RA;
- Demonstrate that the IC Team collectively has the required “experience and expertise with dam design, construction, and in the evaluation and assessment of the safety of existing dams, commensurate with the scale, complexity, and relevant technical disciplines of the project and type of review, inspection, and assessment being performed;”<sup>6</sup> and
- Address any potential conflicts of interest that may exist, specifically in regard to the requirement in 18 CFR § 12.34(b)(3), which prohibits any member of the IC Team from reviewing their own previous work.

You are required to obtain written approval of the proposed IC Team from the Director, D2SI prior to the performance of the Part 12D Inspection.<sup>7</sup> File the Part 12D Inspection Plan, including the IC Team Proposal, using the Commission’s eFiling system with the following address block on your transmittal letter:

Mr. David Capka, P.E., Director  
Division of Dam Safety and Inspections  
Federal Energy Regulatory Commission  
Office of Energy Projects

You can access the Commission’s eFiling system at <https://www.ferc.gov/ferc-online/overview>. Select Hydro: Regional Office and Portland Regional Office from the eFiling menu. The cover page of the filing must indicate that the material was eFiled. For assistance with eFiling, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

Section 16-3.3 of the Engineering Guidelines provides additional information related to the Part 12D Inspection Plan and IC Team Proposal. Please note that you may provide the name(s) and resume(s) of any supporting members of the IC Team in the Pre-Inspection Preparation Report (discussed below) instead of the IC Team Proposal, which provides flexibility for assigning subject matter experts closer to the inspection and PFMA/L2RA dates.<sup>8</sup>

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<sup>6</sup> 18 CFR § 12.31(b)

<sup>7</sup> 18 CFR § 12.34(a)

<sup>8</sup> 18 CFR § 12.34(b)(4)

## **Review of Prior Reports**

The IC Team must “review and consider all relevant reports on the safety of the development made by or written under the direction of Federal or state agencies, submitted under Commission regulations, or made by other consultants,” and “must perform sufficient review to have, at the time of the [inspection], a full understanding of the design, construction, performance, condition, downstream hazard, monitoring, operation, and potential failure modes of the project works.” As the licensee, you are responsible for “[providing] to the independent consultant team all information and reports necessary” to fulfill these requirements. For a CA, the IC Team must also possess an understanding of the risk associated with the project works, though this requirement will be minimal for an initial CA unless prior risk studies have been performed for the project.

When determining whether a completed study requires review by the IC Team, the status of the FERC review is irrelevant. The IC Team must review all current completed studies (i.e., those have been or are ready to be submitted to the FERC and have not been superseded). The IC Team may be requested to review in-progress studies (i.e., those that have not been submitted to the FERC) on a case-by-case basis. Generally, the IC Team will only be required to review studies completed by the date of FERC approval of the IC Team.

## **Pre-Inspection Preparation Report**

At least 30 days prior to the first in-person IC Team activity (field inspection, PFMA, or RA), you are required to submit a preliminary report (the CA-PIPR) documenting the initial findings from the IC Team’s review of project documentation, instrumentation data, and other information.<sup>9</sup> We will review the CA-PIPR to evaluate whether the IC Team has an adequate understanding of project features and determine whether the inspection activities can proceed as scheduled. If the name(s) and resume(s) of any supporting members of the IC Team were not provided in the Part 12D Inspection Plan, they must be provided in the letter transmitting the CA-PIPR. Section 16-4 of the Engineering Guidelines contains additional information regarding PIPRs.

**If you do not submit the CA-PIPR in a timely manner, or if the CA-PIPR does not clearly demonstrate that the IC Team has performed the necessary level of preparation, we may require postponement of the in-person IC Team inspection activities.** Regional Office staff will review the CA-PIPR and determine whether it is acceptable, generally acceptable, or unacceptable, as described in Section 16-4.1 of the Engineering Guidelines. If the CA-PIPR is acceptable or generally acceptable, the Part 12D Inspection may proceed as scheduled, though we may request follow-up action(s) to

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<sup>9</sup> 18 CFR § 12.40(f)

be completed prior to the first activity. If the CA-PIPR is unacceptable, the Part 12D Inspection will be postponed, and that postponement will not constitute good cause for an extension to submit the CAR. If the Regional Engineer does not issue a letter within two weeks after the CA-PIPR is submitted, the CA-PIPR will be deemed acceptable by default.

### **Field Inspection**

The scope of any Part 12D Inspection includes “a physical field inspection of accessible project works, including galleries, adits, vaults, conduits, earthen and concrete-lined spillway chutes, the exterior of water conveyances, and other non-submerged project features that may require specialized access to facilitate inspection.” Section 16-6.7.1 of the Engineering Guidelines contains additional details regarding inspection of the reservoir rim and spillway chutes; observation of gate operations; the review of special inspection reports; and the inspection of typically inaccessible features.

You must provide a schedule for the field inspection to the Regional Office in advance of the inspection. If the IC Team intends to split into smaller groups to inspect multiple project features simultaneously, you must inform us well in advance. Typically, Regional Office staff will accompany the IC Team during the field inspection, and we will need to ensure that we send sufficient personnel to observe the project features with the IC Team. Any special access procedures and safety equipment should be identified ahead of time so that everyone attending the field inspection can prepare accordingly.

### **Potential Failure Modes Analysis**

You are required to perform a completely new Potential Failure Modes Analysis (PFMA) as part of this Comprehensive Assessment<sup>10</sup>. Chapter 17 of the Engineering Guidelines contains additional information about the PFMA process and requirements for performance, documentation, and follow-up, and you should review the chapter in detail to have a complete understanding of the process. Sections 16-6.6.2 and 16-6.6.4 of the Engineering Guidelines provide information that is specific to the performance and documentation of a PFMA during a CA, which is significantly different from the “PFMA reviews” that were performed under the previous Guidelines. **Please note the following significant changes to our PFMA process:**

- The definition of the term ‘failure’ has been revised to include not only the loss of the reservoir, but also the inability of the project features or components to perform their intended function and the project features or components performing in an impaired or compromised fashion. This includes misoperation of project elements.

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<sup>10</sup> 18 CFR § 12.37(f)

- Prior to identifying project potential failure modes, the PFMA team must develop a complete understanding of the physical project features, components, and elements and the interactions, relationships, and dependencies of those physical elements in a systems context. This understanding must include the identification of potential backup systems and redundancies as well as operational protocols, standard operating procedures, lines of communication, feedback, and authorities and responsibilities of project personnel.
- The brainstorming session should be performed in a structured manner through project features, loading conditions, and failure mechanisms to help ensure that the team does not miss or overlook candidate PFMs (Section 17-4.7.5 of the Engineering Guidelines).
- The PFMA must include consideration of the potential contribution and influence of human and organizational factors, such as organizational culture and decision-making authority and practices, and how these factors can contribute to failure. The propensity toward failure is determined by the balance of factors that contribute to failure versus safety.
- When classifying candidate Potential Failure Modes (PFMs), you should use the PFM screening process described in Chapter 17 of the Engineering Guidelines (Section 17-4.7.8 and Figure 17-1). The Commission no longer uses numbered categories.
- PFMs should be documented in a consistent format. Appendix 17-G in the Engineering Guidelines provides a suggested PFM template. The PFM labels should be logical and provide an indication of what the PFM covers; Table 17-1 shows an example of a preferred nomenclature.
- Licensee staff are prohibited from serving as the facilitator (Section 17-4.3.2 of the Engineering Guidelines).

### **Level 2 Risk Analysis (L2RA)**

You are required to perform a risk analysis as part of this Comprehensive Assessment.<sup>11</sup> Chapter 18 of the Engineering Guidelines contains additional information about the risk analysis process and requirements for performance, documentation, and follow-up, and you should review the chapter in detail to have a complete understanding of the process. Sections 16-6.6.3 and 16-6.6.4 of the Engineering Guidelines provide information that is specific to the performance and documentation of an L2RA during a CA. Please note the following highlighted items regarding the L2RA process:

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<sup>11</sup> 18 CFR § 12.37(g)

- Section 18-5 of the Engineering Guidelines identifies the qualifications of the risk analysis team, including those of the risk analysis facilitator.
- The following risk measures should be included in the risk analysis:
  - Societal incremental life safety risk
  - Non-breach life safety risk
  - Annual probability of failure

Where appropriate, economic and other consequences such as environmental, cultural, etc. should also be considered.

- Probabilistic loading estimates for hydrologic and seismic loads are required to perform the risk analysis. These estimates must be prepared in advance of the risk analysis session so that information is available for the risk analysis.
- Likewise, consequence estimates (life loss and others as appropriate) are required to perform the risk analysis. These estimates must be prepared in advance of the risk analysis session so that information is available for the risk analysis.
- Screening of potential failure modes for the risk analysis should be performed in accordance with the process described in Section 18-7.2 of the Engineering Guidelines.
- Risk estimates should be portrayed using the risk matrices provided in Section 18-11 of the Engineering Guidelines.
- Similar to the development and documentation of potential failure modes for the PFMA, potential failure modes for the risk analysis should be documented in a consistent format. Appendix 18-C of the Engineering Guidelines provides a suggested template.

### **Comprehensive Assessment Report**

By the due date shown above, you are to submit the IC Team's CAR to this office. Section 16-6 of the Engineering Guidelines contains additional information about the documentation required in each section of the CAR. Please note the following specific requirements that are important for you and the IC Team to fully understand:

- **Incorporation by Reference.** The regulations implemented by Order 122 (January 28, 1981) permitted the incorporation by specific reference to a previous Part 12D Report if the conditions, assumptions, and available information had not changed. **This is not permitted under the regulations that were implemented by Order 880 and which went into effect on April 11, 2022.** The IC Team must document their own interpretation and evaluation in each section of the CAR, where required.

- Evaluation of Performance. The evaluation of the performance of project works must be an independent interpretation based on the IC Team’s visual observations and review of instrumentation data and surveillance reports. The IC Team may not rely entirely on previous interpretations or state that a particular condition or instrumentation data does not indicate a potential issue simply because it is not changing over time. The evaluation must clearly address the identified PFMs as well as whether any previously unidentified PFMs may be active or developing.
- Specific Evaluation. The IC Team must evaluate the adequacy of spillways, as described in 18 CFR § 12.39; the structural adequacy and stability of structures under all credible loading conditions; the potential for internal erosion and/or piping of embankments, foundations, and abutments.<sup>12</sup>
- Review of Design Basis and Construction. The IC Team must review historical construction documents in order to evaluate “the design and construction practices used during original construction and subsequent modifications, in comparison with the industry best practices in use at the time of the [CA].”<sup>13</sup> Additional information is provided in Section 16-6.3 of the Engineering Guidelines.
- Review of Analyses of Record. The IC Team must review and evaluate the studies and analyses of record and specifically address the accuracy, relevance, and consistency with the current state-of-the-practice of dam engineering. Additional information regarding this component of a CA is provided in Section 16-6.4 of the Engineering Guidelines. If the IC Team is unable to review any particular analysis of record; or if they disagree with the assumptions, methods, calculations, results, or conclusions; the IC Team must recommend that the Licensee complete a new analysis.<sup>14</sup>
- Recommendations. For each corrective measure the IC Team provides in the CAR, they are also required to provide their recommendation of a reasonable time for the Licensee to carry out the corrective measure.

### **Review Meeting and Presentation**

Within 60 days of submitting the Part 12D Report, the IC Team is to present a summary of their findings, conclusions, and recommendations to the Licensee and Commission staff in a CA Review Meeting. The draft review meeting presentation should be provided to all participants in advance. The meeting may be in person, virtual, or hybrid. Refer to Section 16-7.5 of the Engineering Guidelines for additional information related to the review meeting. It may be helpful to conduct this meeting between 30-45 days after submittal of the Part 12D Report so the Licensee can ask

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<sup>12</sup> 18 CFR § 12.38(b)(1) through (3)

<sup>13</sup> 18 CFR § 12.38(b)(4)

<sup>14</sup> 18 CFR § 12.38(c), § 12.36(d)(2)

questions before submitting their plan and schedule to address the IC Team's recommendations.

### **Corrective Measures – IC Team Recommendations and Licensee Plan and Schedule**

Within 60 days of submitting the Part 12D Report, you must submit your plan and schedule for addressing any recommendations provided by the IC Team.<sup>15</sup> Your plan may include any proposal, including taking no action, that you consider a preferred alternative to any corrective measures recommended by the IC Team, and you may not concur with the IC Team's recommended time to complete each corrective measure. However, it is your responsibility to provide complete justification in support of your preferred alternative, and the Regional Engineer may require modifications to your proposed plan and schedule.<sup>16</sup> You must submit an annual report documenting the status of the corrective measures until all have been completed.<sup>17</sup>

If during the course of their inspection, the IC Team discovers any condition for which emergency corrective measures are advisable, the IC Team must notify you immediately and you must notify the Regional Engineer pursuant to 18 CFR § 12.10(a).<sup>18</sup>

### **Closing**

The Commission's dam safety program is a cooperative process that includes the Licensee, the IC Team, and the FERC. The most important of the three elements is the Licensee, as you operate the project, see the project on a regular basis, and are responsible for the performance monitoring program used to determine if any potential failure modes are developing. It is your responsibility as the Licensee to submit the Part 12D Report to the FERC and ensure that the Part 12D Report meets the requirements of the Commission's Regulations and the Engineering Guidelines before it is submitted. The Part 12D Report is a FERC requirement but is also a valuable resource for you as the dam owner.

The Part 12D Report and all related submittals should be eFiled by selecting Hydro: Regional Office and Portland Regional Office. If you are also filing a Supporting Technical Information Document (STID) or an STID update, the STID should also be eFiled by selecting Hydro: Regional Office and Portland Regional Office. If the reference materials comprising the Digital Project Archive (DPA) cannot be eFiled, contact the project engineer to discuss options for transmitting the reference materials to the Commission. You can access the Commission's eFiling system at <https://www.ferc.gov/ferc-online/overview>. The cover page of the filing must indicate

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<sup>15</sup> 18 CFR § 12.41(a)(1)(i)

<sup>16</sup> 18 CFR § 12.4(b)(2)(iii)(C)

<sup>17</sup> 18 CFR § 12.41(a)(2)

<sup>18</sup> 18 CFR § 12.41(b)

that the material was eFiled. For assistance with eFiling, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

If you have any questions regarding this letter or Enclosures, please do not hesitate to call me at 503-552-2715. Your support is critical for ensuring the safety of your project and I am available to discuss any concerns or comments that you may have.

Sincerely,

Douglas L. Johnson, P.E.  
Regional Engineer

Enclosures:

1. Initial Coordination Call Agenda
2. Second Coordination Call Agenda
3. Outline for the CAR and CA-PIPR



**Initial Coordination Call Agenda**

1. General Requirements
  - a. Regulations
  - b. Guidelines
  - c. Scope of inspection
  
2. Overview of Changes to Part 12D Inspections
  - a. Detailed review of prior information
  - b. Specific evaluation of design basis, construction, analyses/studies of record
  - c. Inspection observations and review of instrumentation data and surveillance reports
  - d. Incorporation by reference – **not permitted**
  - e. PFMA and L2RA procedures
  
3. Licensee's Role
  - a. Internal processes to scope the Part 12D Inspection
  - b. Prepare and submit Part 12D Inspection Plan and IC Team Proposal
  - c. Provide required information/documentation to IC Team
  - d. Coordinate logistics (to be discussed in detail during Second Coordination Call)
  - e. Submit IC Team's CA-PIPR to FERC
  - f. Attend inspection and PFMA/L2RA
  - g. Submit IC Team's CAR to FERC
  - h. Participate in CA Review Meeting
  - i. Review IC Team's recommendations; develop plan and schedule to address the recommendations and submit to FERC
  
4. Project-Specific Discussion
  - a. Outstanding issues/concerns
  - b. Initial thoughts – potential technical disciplines required
  - c. Estimated timeframe for inspection and PFMA/L2RA

**Second Coordination Call Agenda**

1. General Requirements
  - a. Regulations
  - b. Guidelines
  - c. Scope of inspection
  
2. IC Team's Responsibilities
  - a. Detailed review and evaluation of prior information
    - i. Design basis and construction
    - ii. Analyses/studies of record
    - iii. Instrumentation data and surveillance reports
  - b. Prepare CA-PIPR and provide to the Licensee
  - c. Perform inspection; participate in PFMA/L2RA
  - d. Prepare CAR and provide to the Licensee
    - i. Include recommendations and reasonable timeframe for the Licensee to complete each
  - e. Prepare and present findings at CA Review Meeting
  - f. Incorporation by reference – **not permitted**
  
3. PFMA and L2RA Procedures
  - a. Revised definition of failure
  - b. Preparation
  - c. Brainstorming
  - d. PFM screening process
  - e. Documentation
  
4. Preliminary Logistics
  - a. Field inspection
  - b. PFMA/L2RA

## Enclosure 3: Outline for the CAR and CA-PIPR

The outline on the following pages can be used for both the CAR and CA-PIPR. For sections that do not require content in the CA-PIPR, the IC Team can leave the heading in place and add a note that the section is retained as a placeholder for use in the CAR. Refer to Appendices 16-D and 16-E of the Engineering Guidelines for additional details regarding the required contents of each section for a CAR and a CA-PIPR, respectively.

**SECTION 1: FINDINGS AND RECOMMENDATIONS**

- 1.1 General Conditions and Evaluation of Performance**
- 1.2 Review and Evaluation of Design and Construction**
- 1.3 Review and Evaluation of Previous Analyses**
- 1.4 Review and Evaluation of Dam and Public Safety Programs**
  - 1.4.1 Owner’s Dam Safety Program**
  - 1.4.2 Dam Safety Surveillance and Monitoring Program**
  - 1.4.3 Hazard Potential Classification**
  - 1.4.4 Emergency Action Plan**
  - 1.4.5 Public Safety Plan**
  - 1.4.6 Operations and Maintenance**
  - 1.4.7 Spillway Adequacy**
  - 1.4.8 Supporting Technical Information Document**
- 1.5 Potential Failure Modes Analysis, Risk Analysis, and Dam Safety Risk Classification**
  - 1.5.1 Potential Failure Modes Analysis**
  - 1.5.2 Level 2 Risk Analysis**
  - 1.5.3 Dam Safety Risk Classification**
- 1.6 Recommendations**

**SECTION 2: DESCRIPTION OF PROJECT FEATURES AND OPERATIONS**

- 2.1 Location and Purpose**
- 2.2 Description of Project Features**
- 2.3 Summary of Operations**

**SECTION 3: REVIEW AND EVALUATION OF DESIGN BASIS AND CONSTRUCTION**

- 3.1 Engineering Geology**
  - 3.1.1 Regional Geology**
  - 3.1.2 Site Geology**
  - 3.1.3 Foundation Explorations**
  - 3.1.4 Geologic Hazards**
- 3.2 Dam**
  - 3.2.1 Design Considerations**
  - 3.2.2 Foundation Excavation and Treatment**
  - 3.2.3 Materials and Placement**
  - 3.2.4 Construction Details**
  - 3.2.5 Modifications**
- 3.3 Spillway**
- 3.4 Outlets**
- 3.5 Powerhouse**
- 3.6 Other Structures**
- 3.7 Mechanical**
  - 3.7.1 Spillway**

## Enclosure 3: Outline for the CAR and CA-PIPR

### **3.7.2 Outlets**

### **3.7.3 Powerhouse**

**SECTION 4: REVIEW AND EVALUATION OF PREVIOUS ANALYSES**

**4.1 Geology**

**4.2 Seismicity**

**4.3 Hydrology and Project Hydraulics**

**4.3.1 Precipitation and Snowmelt**

**4.3.2 Flood Loading and Routings**

**4.3.3 Dam Breach Studies**

**4.4 Analyses of Project Features**

**4.4.1 Analyses of [Project Feature 1]**

**4.4.1.1 Static Analyses of [Project Feature 1]**

**4.4.1.2 Seismic Analyses of [Project Feature 1]**

**4.4.1.3 Hydraulic and Overtopping Analyses of [Project Feature 1]**

**4.4.1.4 Other Analyses of [Project Feature 1]**

**4.4.2 Analyses of [Project Feature 2]**

**4.4.2.1 Static Analyses of [Project Feature 2]**

**4.4.2.2 Seismic Analyses of [Project Feature 2]**

**4.4.2.3 Hydraulic and Overtopping Analyses of [Project Feature 2]**

**4.4.2.4 Other Analyses of [Project Feature 2]**

**4.4.3 Analyses of [Project Feature 3, 4, etc.]**



**SECTION 5: PROJECT STATUS**

- 5.1 Modifications to Project Works**
- 5.2 Modifications to Project Operations**
- 5.3 Recommendations of Previous Independent Consultants**
- 5.4 Outstanding/Ongoing Studies**
- 5.5 Completed Studies**
- 5.6 Summary of Operations and Maintenance Programs**

**SECTION 6: FIELD INSPECTION OBSERVATIONS AND  
INTERPRETATION OF MONITORING DATA**

**6.1 General**

**6.2 [Name of Project Feature 1]**

**6.2.1 Field Inspection Observations**

**6.2.2 Review and Evaluation of Instrumentation Data and Surveillance**

**6.2.3 Evaluation with Respect to Potential Failure Modes**

**6.2.4 Conclusion**

**6.3 [Name of Project Feature 2]**

**6.3.1 Field Inspection Observations**

**6.3.2 Review and Evaluation of Instrumentation Data and Surveillance**

**6.3.3 Evaluation with Respect to Potential Failure Modes**

**6.3.4 Conclusion**

**6.4 [Name of Project Feature 3, 4, etc.]**

**6.5 Overall Interpretation of Instrumentation Data**

**SECTION 7: PFMA AND RISK ANALYSIS**

**7.1 General**

**7.2 Probabilistic Hydrologic Loading**

**7.3 Probabilistic Seismic Loading**

**7.4 Consequences**

**7.5 PFMA**

**7.6 Risk Analysis and Summary**

**SECTION 8: REVIEW AND EVALUATION OF DAM AND PUBLIC SAFETY PROGRAMS**

- 8.1 Owner’s Dam Safety Program**
- 8.2 Dam Safety Surveillance and Monitoring Program**
- 8.3 Hazard Potential Classification**
- 8.4 Emergency Action Plan**
- 8.5 Public Safety Plan**
- 8.6 Operations and Maintenance**
- 8.7 Spillway Adequacy**
- 8.8 Supporting Technical Information Document and Digital Project Archive**
  - 8.8.1 Potential Failure Modes Analysis and Risk**
  - 8.8.2 Project Description**
  - 8.8.3 Construction History**
  - 8.8.4 Standard Operating Procedures**
  - 8.8.5 Geology, Seismicity, and Geotechnical Data**
  - 8.8.6 Hydrology and Hydraulics**
  - 8.8.7 Dam Safety Surveillance and Monitoring Plan**
  - 8.8.8 Stability, Stress, and Other Analyses of Dams and Water Conveyances**
  - 8.8.9 Gates, Valves, and Other Water Level Control Valves**

Enclosure 3: Outline for the CAR and CA-PIPR

**8.8.10 Pertinent Correspondence Related to the Safety of Project Works**

**8.8.11 References**

Enclosure 3: Outline for the CAR and CA-PIPR

**APPENDICES FOR THE COMPREHENSIVE ASSESSMENT REPORT**

**Appendix A: FERC Letter Requiring Part 12D Inspection**

**Appendix B: FERC Letter Approving Part 12D Inspection Plan and IC Team**

**Appendix C: Project Figures**

**Appendix D: Instrumented Monitoring Data Plots**

**Appendix E: Inspection Photographs**

**Appendix F: Inspection Checklists and/or Field Notes**

**Appendix G: Operation and Maintenance Documentation**

**Appendix H: Potential Failure Modes Analysis Report**

**Appendix I: Risk Analysis Report**

**Appendix J: Independent Calculations**