



M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with David Evans and Associates for
Construction Management Services Related to the
Pudding River (Whiskey Hill Road) Bridge Replacement Project #01559**

Purpose/Outcomes	This contract will provide construction management during the construction of the Pudding River (Whiskey Hill Road) Bridge #01559 Project.
Dollar Amount and Fiscal Impact	Total consultant contract cost: \$703,751.55
Funding Source	FHWA Surface Transportation Funds \$ 631,476.27 County Road Funds (10.27% of Fed Funds) \$ 72,275.28
Safety Impact	The existing bridge is very narrow and structurally deficient and will be replaced with a new structure meeting current design standards
Duration	Upon execution through completion of the project (expected 1/31/18)
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This project will help grow a vibrant economy and ensure safe communities by improving safety and reliability on a major arterial roadway in Clackamas County by replacing a structurally deficient bridge. 2. The new bridge will provide strong infrastructure and improve safety for the community by replacing a bridge that is aligned along a horizontal curve with poor sight distance and has a history of accidents.
Previous Board Action	<p>04/14/11: BCC Approval of Agreement No. 27472 for design of the subject project</p> <p>07/18/13: BCC Approval of Agreement No. 27929 for right of way services for the subject project</p> <p>07/25/13: BCC Approval of Amendment No. 1 to Agreement No. 27472</p> <p>07/17/14: BCC Approval of Resolution No. 2014-77, Declaring the Necessity and Purpose for Acquisition of Rights of Way and Easements, and Authorizing Negotiations and Eminent Domain Actions for the subject project</p> <p>09/11/14: BCC Approval of Agreement with Marion County to perform right of way negotiations and acquisitions in Marion County for the subject project</p> <p>05/05/16: BCC Approval of a contract with Farline Bridge, Inc. for the construction of the subject project</p> <p>05/12/16: BCC Approval of Amendment No. 2 to Agreement No. 27472 for accounting requirements and reimbursement rates</p>
Contact Person	Stan Monte, Construction Project Manager – DTD 503-742-4678

BACKGROUND:

As part of the Federal Highway Bridge Program (HBP) and Federal-Aid Surface Transportation Program (STP), Clackamas County received funding for the replacement of the Pudding River (Whiskey Hill Rd) Bridge. The existing Pudding River (Whiskey Hill) Bridge was built in 1931 and is listed as structurally deficient with a sufficiency rating of 11.5. The project will replace the existing bridge with a new structure that meets current design standards.

The purpose of this contract is to hire a consultant to provide construction engineering assistance services during the project's construction. The services to be provided include support to County staff with inspections, technical issues that arise during construction, clarification of design details, and contract administration. David Evans and Associates, Inc. has a special and unique knowledge of this project that was gained in the design process. As the Engineer of record for design, David Evans and Associates, Inc. is the best choice to perform the required services outlined in the contract. The proposed contract is for \$703,751.55.

This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approves and signs the contract with David Evans and Associates, Inc. for construction management services for the Pudding River (Whiskey Hill Road) Bridge project.

Sincerely,

Mike Bezner, PE
Transportation Engineering Manager

Placed on the _____ agenda by the Purchasing Division.

For information on this issue or copies of attachments please contact Stan Monte at 503-742-4678

PROFESSIONAL SERVICES CONTRACT DOCUMENTS

FOR

**CONSTRUCTION MANAGEMENT SERVICES RELATED TO THE PUDDING RIVER
(WHISKEY HILL RD) BRIDGE REPLACEMENT PROJECT
David Evans and Associates, Inc.**

BOARD OF COUNTY COMMISSIONERS

Commissioner John Ludlow, Chair

Commissioner Jim Bernard

Commissioner Paul Savas

Commissioner Martha Schrader

Commissioner Tootie Smith

Donald Krupp
County Administrator

George Marlton
Procurement Division Director

Kathryn M. Holder
Buyer

**PROFESSIONAL SERVICES CONTRACT WITH DAVID EVANS AND ASSOCIATES,
INC. FOR CONSTRUCTION MANAGEMENT SERVICES RELATED TO THE
PUDDING RIVER (WHISKEY HILL RD) BRIDGE REPLACEMENT PROJECT**

This contract for professional services is entered into by and between Clackamas County, a political subdivision of the State of Oregon, hereinafter referred to as the COUNTY, and **DAVID EVANS AND ASSOCIATES, INC.**, hereinafter called the CONTRACTOR, to provide the services described below at the rates included in Attachment "A," which by this reference is hereby made a part hereof and incorporated herein. The following provisions shall comprise this Contract:

I. SCOPE:

This agreement covers the services as described in Attachment "A" inclusive. The CONTRACTOR shall meet the standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. Work shall be performed in accordance with a schedule approved by the COUNTY. The term of the contract shall **commence upon contract execution and continue through December 31, 2018.**

II. COMPENSATION:

A. The COUNTY agrees to compensate the CONTRACTOR on a fee-for-services basis per Attachment "A". Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent COUNTY contract and/or purchase order numbers. All charges shall be billed monthly and will be paid net 30 days from receipt of invoice. The maximum annual compensation authorized under this Contract shall be **\$703,751.55.**

B. The CONTRACTOR is engaged hereby as an independent contractor and will be so deemed for purposes of the following:

1. The CONTRACTOR will be solely responsible for payment of any Federal or State taxes required as a result of this Contract.

2. This Contract is not intended to entitle the CONTRACTOR to any benefits generally granted to COUNTY employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the CONTRACTOR are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Oregon Public Employees Retirement System).

3. If the CONTRACTOR has the assistance of other persons in the performance of this Contract, and the CONTRACTOR is a subject employer, the CONTRACTOR shall qualify and remain qualified and pay employees for the term of work in accordance with this Contract as an insured employer under Oregon Revised Statutes ("ORS") 279B.020 and ORS 279B.235, which are incorporated herein by this reference.

C. The CONTRACTOR certifies that, at present he or she if an individual, is not a program, Agency, or Federal employee.

D. The CONTRACTOR, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

III. CONSTRAINTS

The CONTRACTOR agrees:

A. If the services to be provided pursuant to Section I Scope are professional and/or consultative, the CONTRACTOR shall not delegate the responsibility for providing those services to any other individual or agency.

B. Pursuant to the requirements of state law, the following terms and conditions are made a part of this Contract:

1. CONTRACTOR shall:

a. Make payments promptly, as due, to all persons supplying to the CONTRACTOR labor or materials for the prosecution of the work provided for in this Contract.

b. Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in the performance of this Contract.

c. Not permit any lien or claim to be filed or prosecuted against the COUNTY on account of any labor or material furnished.

2. If the CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the CONTRACTOR by reason of this Contract.

3. The CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which are incorporated herein by this reference.

All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

4. The CONTRACTOR shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the CONTRACTOR, of all sums which the CONTRACTOR agrees to pay for such services and all moneys and sums which the CONTRACTOR collected or deducted from the wages of the CONTRACTOR'S employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

6. The CONTRACTOR shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work as described in Attachment A under this Contract.

7. To the extent the CONTRACTOR is negligent, the CONTRACTOR shall indemnify, hold harmless and defend the COUNTY, its officers, commissioners, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof (including but not limited to attorney's fees), arising out of or based upon damage or injuries to persons or property caused by the negligent acts, errors, omissions, or fault of the CONTRACTOR or the CONTRACTOR'S employees or agents.

8. The CONTRACTOR'S failure to perform the scope of work identified or failure to meet established performance standards shall be subject to consequences that include but are not limited to any or all of:

- a.** Reducing or withholding payment;
- b.** Requiring the CONTRACTOR to perform, at the CONTRACTOR'S expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or
- c.** Declaring a default, terminating the Contract and seeking damages and other relief under the terms of the Contract or other applicable law.

9. The CONTRACTOR at all times shall observe and comply with all federal and state laws and lawful regulations issued there under and local bylaws, ordinances, regulations and codes which in any manner affect the activities of the CONTRACTOR under this Contract, and further shall observe and comply with all orders or decrees as exist at present and those which may be enacted later by bodies or tribunals having any jurisdiction or authority over such activities of the CONTRACTOR.

The CONTRACTOR must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Any violation shall entitle the COUNTY to terminate this Contract, to pursue and recover any all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- 1.** Termination of this Contract, in whole or in part;
- 2.** Exercise of the right of setoff, and withholding of amounts otherwise due and owing to the CONTRACTOR, in an amount equal to the COUNTY's setoff right, without penalty; and

3. Initiation of an action of proceeding for damages, specific performance, declaratory or injunctive relief. The COUNTY shall be entitled to recover any and all damages suffered as the result of the CONTRACTOR's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and the COUNTY may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

10. The CONTRACTOR represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

- a. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- b. Any tax provisions imposed by a political subdivision of this state that applied to CONTRACTOR, to CONTRACTOR'S property, operations, receipts, or income, or to CONTRACTOR'S performance of or compensation for any work performed by CONTRACTOR;
- c. Any tax provisions imposed by a political subdivision of this state that applied to CONTRACTOR, or to goods, services, or property, whether tangible or intangible, provided by CONTRACTOR; and
- d. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

IV. INSURANCE REQUIREMENTS

A. Commercial General Liability

Required by COUNTY Not required by COUNTY

The CONTRACTOR agrees to furnish the COUNTY evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The COUNTY, at its option, may require a complete copy of the above policy.

B. Automobile Liability

Required by COUNTY Not required by COUNTY

The CONTRACTOR agrees to furnish the COUNTY evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and

property damage for the protection of the COUNTY, its officers, commissioners, agents and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The COUNTY, at its option, may require a complete copy of the above policy.

C. Professional Liability

Required by COUNTY Not required by COUNTY

The CONTRACTOR agrees to furnish the COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or negligent acts, errors and omissions coverage for the protection of COUNTY, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Contract. The COUNTY, at its option, may require a complete copy of the above policy.

D. If the CONTRACTOR has the assistance of other persons in the performance of this Contract, and the CONTRACTOR is a subject employer, the CONTRACTOR agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The CONTRACTOR shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

E. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided the coverage's retroactive date is on or before the effective date of this Contract.

F. The insurance, other than the professional liability and workers compensation insurances, shall include the COUNTY as an additional insured. Such insurance shall provide sixty (60) days written notice to the COUNTY in the event of a cancellation or material change that does not meet the requirement of this Agreement, and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. This policy(s) shall be primary insurance, with exception to workers compensation and professional liability, as respects to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.

G. The CONTRACTOR shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the CONTRACTOR under this Contract, unless this requirement is expressly modified or waived by the COUNTY in writing.

V. SUBCONTRACTS:

The CONTRACTOR shall be responsible to the COUNTY for the actions of persons and firms performing subcontract work. The CONTRACTOR certifies that the CONTRACTOR has not discriminated and will not discriminate against any minority, women or emerging small business enterprise that is owned or controlled by or that employs a disabled veteran, in obtaining any subcontract.

VI. TERMINATION-AMENDMENT:

A. This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

B. This Contract and any amendments to this contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County.

C. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

The undersigned, by its signature, agrees to perform the scope of work as described in the Contract documents and meet the performance standards set forth therein. By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

David Evans and Associates, Inc.
530 Center Street NE, Suite 605
Salem, OR 97301

CLACKAMAS COUNTY BOARD OF
COUNTY COMMISSIONERS:

Authorized Signature

Chair

Name / Title (Printed)

Recording Secretary

Date

Date

Telephone Number / Fax Number

APPROVED AS TO FORM

114015-10
*Oregon Business Registry #

County Counsel

DBC Oregon
Entity Type / State of Formation

Date

* Please do not provide assumed business names or trade names. Please provide only the correct legal name of the entity or individual entering into the Contract.