

Misc. Contracts and Agreements
No. 73000-00045095

INTERGOVERNMENTAL AGREEMENT

Salem Area Traffic Signal Control Center City of Salem
Federal Fiscal Years 2025 and 2026

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and the CITY OF SALEM, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities, and units of local government for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the Parties.
2. The Parties agree that the intent of the Project is to operate the Salem Regional Traffic Signal Control Center to provide a regional focal point for the computerized control of traffic signals within the Salem-Keizer Metropolitan Area Urban Growth Boundary.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to Agency funding and operating the Salem Regional Traffic Signal Control Center project to improve traffic flow using computerized control of traffic signals within the Salem-Keizer Metropolitan Area Urban Growth Boundary, hereinafter referred to as "Project." The Project Work Program and Budget are specified in Exhibit A, attached hereto, and by this reference made a part hereof.
2. Federal funds under this Agreement are provided under Title 23, United States Code. The total Project cost is estimated at \$848,883.00, which is subject to change. Federal funds for this Project shall be limited to \$663,000.00. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent (10.27%) match for all eligible costs.
3. Agency shall make all payments for work performed on the Project and invoice State for one-hundred percent (100%) of the Project costs. State shall reimburse approved Agency invoices at the pro-rated federal share of 89.73 percent (89.73%) up to

Key No. 22721

\$663,000.00 in federal funds. State will submit the requests for federal funding to the Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by the FHWA. Any work performed outside the period of performance and scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.

4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Assistance Listing Number (ALN) and title for this Project is 20.205, Highway Planning and Construction.
5. This Agreement becomes effective on July 1, 2025 and terminates on June 30, 2027.

STATE OBLIGATIONS

1. State shall submit requests for federal funding to FHWA for approval of federal-aid participation in the work under this Project. No work shall proceed until said approval has been obtained. State's Project Manager shall notify Agency in writing when authorized to proceed with the work.
2. State shall, upon receipt of monthly approved, itemized invoices of actual costs incurred by Agency for the Project, reimburse Agency at the pro-rated federal share of 89.73 percent (89.73%) for the federal participating amount, up to the maximum amount of \$663,000.00.
3. In cases where Agency modifies traffic signal timing to add railroad or emergency vehicle preemption, bus priority, or other changes that affect vehicle or pedestrian clearances, or operation of the state highway, such modification shall be reported to State's Region 2 Traffic Engineer. State shall retain the right of review of the traffic signal timing for signals on state highways and shall reserve the right to request adjustments when needed. All modifications shall follow guidelines set forth in the current Manual on Uniform Traffic Control Devices and the current ODOT Traffic Signal Policy and Guidelines and should emphasize the efficient and safe movement of traffic on the state highway system.

AGENCY OBLIGATIONS

1. Agency shall perform the work described in Exhibit A. Agency shall confer with State during the Project upon any request by State.
2. Agency shall not proceed with any federal-aid participation work prior to receiving written authorization from State's Project Manager, or designee. For Agency Program Years 2025-2026 and 2026-2027 (funds from Federal Fiscal Year 2025) funding will become available for reimbursement only after FHWA has approved the funding, as provided in Terms of Agreement Paragraphs 2 and 3.
3. Agency agrees to pay all required match of the federal funds and any non-participating costs, including all costs in excess of the available federal funds, as provided in the Terms of Agreement, Paragraphs 2 and 3.

4. Upon execution of this Agreement, Agency shall designate a contact person to be responsible for progress of the Project and for documentation of the work performed. The contact person shall be responsible for and authorized to certify invoices for actual costs incurred by Agency for the Project. All work and records of such work shall be in strict compliance with federal statutes, rules, and regulations.
5. Agency shall, in accordance with Title 23, Code of Federal Regulation (CFR) part 940.11, conduct a systems engineering analysis for any upgrades or newly added technology to the current traffic control system.
6. Agency shall make no changes to traffic signal timing for any traffic signals located on the state highway system within the Salem-Keizer Metropolitan Area Urban Growth Boundary without mutual concurrence between Agency's Traffic Engineer and State's Region 2 Traffic Engineer.
7. Agency shall work with State to determine if the maintenance and operation responsibilities for individual signals on the state highway system can be transferred to Agency. As responsibilities are negotiated, separate Agreements shall be written documenting the work and cost responsibilities of each Party. This Agreement does not obligate the State to transfer signal responsibilities to Agency.
8. Agency shall keep accurate cost accounting records. Agency shall, no more than once per month, prepare and submit itemized invoices for actual Project costs incurred by Agency directly to State's Project Manager, or designee, for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed.
9. As federal funds are involved in this Agreement, Exhibits B and C, are attached hereto and by this reference made a part hereof, and are hereby certified to by Agency representative.
10. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements, and grant provisions applicable to the federal funds, and will, upon Agency's breach of any such conditions that requires State to return funds to the FHWA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement.
11. Federal Transparency Act Subaward Reporting

Agency agrees to provide to State the subaward reporting information required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252 ("Federal Transparency Act") in accordance with Exhibit D – Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting. See [CFR Appendix A to Part 170, Title 2](#). Agency agrees to include its Unique Entity Identifier (UEI) on the Agreement

signature page of this Agreement.

12. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
13. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
14. Information required by 2 CFR 200.332(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by State to Agency with the Notice to Proceed.
15. Indirect Cost Rate
 - a. The indirect cost rate for this Project at the time the Agreement is written is:

134.38 percent (134.38%) and may change upon notice to State and State's subsequent written approval. Agency may have other indirect cost rates for departments and or disciplines that have been approved for use by their cognizant agency and State; and these rates may be used on the Project, as applicable.
 - b. If the approved rate(s) change(s) during the term of this Agreement, Agency shall invoice State using the current indirect cost rate(s) for the Project on file with State at the time the work is performed. If Agency does not have approved indirect cost rate(s) on file with State at the time the work is performed, Agency shall invoice State using a zero percent (0%) rate.
16. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Agency.
17. Agency shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other

applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State or Agency may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:
 - a. If the other Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If the other Party fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from the terminating Party fails to correct such failures within ten (10) days or such longer period as the terminating Party may authorize.
 - c. If either Party fails to provide payment of its share of the cost of the Project.
 - d. If either Party fails to receive funding, appropriations, limitations, or other expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State or Agency is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense, and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement

actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines, or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information, and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines, or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information, and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. State's contact for this Project is Valerie Greenway, Senior Transportation Project Manager; 455 Airport Road SE, Salem, Oregon 97301; 971-304-5021; Valerie.greenway@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
9. Agency's contact for this Project is Kevin Hottmann, Traffic Engineer, City of Salem, Public Works Division; 555 Liberty Street SE, Room 325, Salem, Oregon 97301; 503-588-6211; khottmann@cityofsalem.net, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
10. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal, or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

11. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in **Agency Obligations, Paragraphs 10, 12, and 17, and General Provisions, Paragraphs 3-7, 10-11, and 13 of this Agreement** shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive.
12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
13. This Agreement and attached Exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
14. Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2024-2027 Statewide Transportation Improvement Program (STIP), (Key No. 22721) that was adopted by the Oregon Transportation Commission on July 13, 2023 (or subsequently by amendment to the STIP).

SIGNATURE PAGE FOLLOWS

CITY OF SALEM, by and through its
elected officials

Agency's Unique Entity Identifier (UEI):

By _____
City Manager

Date _____

By _____

Date _____

APPROVED AS TO LEGAL FORM
(If required in Agency's process)

By _____
City Legal Counsel

Date _____

Agency Contact:

Kevin Hottmann, Traffic Engineer
City of Salem, Public Works Division
555 Liberty Street SE, Room 325
Salem, Oregon 97301
503-588-6211
khottmann@cityofsalem.net

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
State Traffic Engineer

Date _____

By _____
Area 3 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Jennifer O'Brien_
Assistant Attorney General via email
dated 5/19/22025. Email retained in file.

State Contact:

Valerie Greenway,
Senior Transportation Project Manager
455 Airport Road SE
Salem, Oregon 97301
971-304-5021
Valerie.greenway@odot.oregon.gov

EXHIBIT A
Salem Regional Traffic Signal Control Center
Work Plan and Budget
Program Years: July 1, 2025 – June 30, 2027

I. WORK PROGRAM

The Regional Traffic Signal Control Center (Center) of the City of Salem provides a focal point for the computerized control of traffic signals within the Salem-Keizer Metropolitan Area Urban Growth Boundary. The Center's operational budget provides the continued employment of one (1) Professional Engineer, and funds half the employment of a second engineer, including training necessary to support the positions.

Additional Agency engineering staff, including the City Traffic Engineer, a Signal Operations Field Supervisor, and other engineering design staff charge time to the Center.

As part of operations for the computerized control of traffic signals in the Center, Agency may engage in the following work:

A. Traffic Signal Timing/Software Enhancement

1. Review and respond to citizen complaints received about traffic signal system operation.
2. Maintain and adjust computerized control of traffic signal timing to provide maximum progression and minimal delay to a majority of users. This requires the application of traffic engineering principles to determine proper phase splits, interval timing, and offsets for time of day operation.
3. Investigate and use program features to enhance the operation of the traffic signal system.
4. Investigate, plan, and implement, as appropriate, traffic signal system migration to National Transportation Communications for ITS Protocol (NTCIP) standards. Work with State to enhance interoperability and connectivity between Agency and other jurisdictions within the Salem-Keizer Metropolitan Area Urban Growth Boundary.
5. Investigate implementing measures for computerized control of traffic signals to increase safety, specifically to reduce bicycle and pedestrian traffic conflicts. This includes the expectation that some reduction in vehicle progression and increased delay should be anticipated and evaluated.

B. Facilities Expansions and Maintenance

1. Plan and coordinate, via computer, the maintenance and operation of the traffic signal system.
2. Plan and design for the expansion of the computerized control of the traffic signal system to include all existing and new traffic signals within the entire Salem-Keizer Metropolitan Area Urban Growth Boundary.
3. Coordinate with all governmental entities, including State, to work toward establishing agreements or contracts for Agency to maintain and operate all of the computerized traffic signals within the Salem-Keizer Metropolitan Area Urban Growth Boundary. This includes traffic signals on the last remaining portions of the state highway system yet to be taken over by Agency from State: Mission Street SE from 17th Street to Interstate 5, within the City of Salem.
4. Coordinate with other regional partners, including State, to plan the expansion and operation of the computerized traffic signal system into the City of Keizer, Marion County, and Polk County.

C. Intelligent Transportation System (ITS) Technology

1. Investigate various facets of ITS technology to incorporate into the computerized traffic signal system, including but not limited to radar surveillance, fiber optic communication, and traffic responsive detection.
2. Budget and design computerized enhancements to the traffic control system.
3. Provide training and education for Agency personnel on the installation and maintenance of ITS technology.
4. Make available to the public via an internet connection, road and traffic information.

D. Traffic Signal Design and Coordination

1. Plan to design, or coordinate the design and development of, new traffic signals or systems as part of Agency's work toward establishing agreements or contracts for Agency to maintain and operate all of the computerized traffic signals within the Salem-Keizer Metropolitan Area Urban Growth Boundary. The coordination of design and development will be to ensure compatibility and proper connection to the computerized traffic control system.

2. Plan to ensure adequate progression can be achieved for any new proposed signals and the revision of any existing signals or signal systems.
3. Plan to aid in the review of Transportation Impact Analyses, with respect to the inclusion of new or revised traffic signals, as proposed mitigation measures.
4. Coordinate with the Salem Keizer Area Transportation Study (SKATS) to support the Regional Congestion Management System (CMS).

II. WORK PROGRAM BUDGET

The following table represents the estimated budget for Agency Program Years 2025-2026 and 2026-2027. The actual expenditure of personal services, training, permits, and licensing costs may vary depending on needs, but the federal funds will not exceed \$663,000.00.

Salem Traffic Signal Control Center Budget Program Years 2025-2027*			
Line Item	Federal Funds	Agency Match	Total
Personal Services	\$656,000	\$185,173	\$841,173
409 Training	\$5,950	\$600	\$6,550
416 Permits and Licensing	\$1,050	\$110	\$1,160
Fund Source Tools	\$663,000	\$185,883	\$848,883

*As listed in the 2024-2027 STIP, Key No. 22721

The terms and conditions in Exhibits B and C will take precedence over the terms and conditions set forth in the body of this Agreement. For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

EXHIBIT B
(Local Agency or State Agency)
CONTRACTOR CERTIFICATION

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation, or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

DEPARTMENT OFFICIAL CERTIFICATION

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

Exhibit C
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

I. INSTRUCTIONS FOR
CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS—
PRIMARY COVERED
TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-2710) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method

and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

II. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a

participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

III. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

IV. NONDISCRIMINATION

During the performance of this Contract, Contractor, for self, assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, color, national origin, age, disability, sex, Income level, Limited English Proficiency (LEP), or any other protected classes listed in other federal or state nondiscrimination authorities in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, color, national origin, age, disability, sex, Income level, Limited English Proficiency (LEP), or any other protected classes listed in other federal or state nondiscrimination authorities.

3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:

a. Contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, age, disability, sex, Income level, Limited English Proficiency (LEP), or any other protected classes listed in other federal or state nondiscrimination authorities. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, national origin, age, disability, sex, Income level, Limited English Proficiency (LEP), or any other protected classes listed in other federal or state

nondiscrimination authorities. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to books, records, accounts, other sources of information, and facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts have been made to obtain the information.

5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

V. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which

may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition.

Only firms DBE certified by Business Oregon, Certification Office for Business Inclusion and Diversity (COBID), may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this Contract, Contractor assures that good faith efforts have

been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VI. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. 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 Federal Agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. 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 Federal Agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection

with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

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EXHIBIT D
Federal Funding Accountability and Transparency Act (FFATA)
Subaward Reporting

(For purposes of this Exhibit, references to “your organization” shall mean “Agency” and references to “ODOT” shall mean “State.”)

A. Background: To fulfill its obligations under the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of Public Law 110–252 (“Federal Transparency Act”), the Oregon Department of Transportation (ODOT) must report subawards (also known as subrecipient awards) and, when applicable, information about a subrecipient’s highly compensated executives to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS). Federal Transparency Act reporting is required for each subaward that equals or exceeds \$30,000 in federal funds.

The Federal Transparency Act requires information on federal awards (federal financial assistance and expenditures) be made publicly available on a single, searchable website: <https://www.usaspending.gov/>. More information about the Federal Transparency Act is available at <https://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>, [CFR Appendix A to Part 170, Title 2](#), and the FSRS website <https://www.fsrs.gov/>.

B. Unique Entity Identifier: At the time this Agreement is executed, your organization shall provide to ODOT, on the Agreement signature page, the federal Unique Entity Identifier (UEI) applicable to the Project so that ODOT may include the UEI in its reports to FSRS. Effective April 4, 2022, the UEI is the primary means of identifying entities registered for federal awards in the System for Award Management (SAM) at <https://www.sam.gov>. If your entity is already registered in SAM, it has been assigned a UEI. The Federal Service Desk has [posted instructions for finding the UEI in SAM](#) at this [link](#).

C. Executive compensation: Prior to execution of this Agreement, your organization shall determine and provide to ODOT information on whether your organization’s executive compensation information must be reported under the Federal Transparency Act, based on the following criteria:

1. In your organization’s previous fiscal year, did your organization receive: **(a)** eighty percent (80%) or more of its annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Federal Transparency Act, as defined in [2 CFR 170.320](#) (and subawards), **AND (b)** twenty five million dollars (\$25,000,000) or more in federal procurement contracts (and subcontracts) and federal financial assistance subject to the Federal Transparency Act, as defined in 2 CFR 170.320 (and subawards)? (Include parent organization, all branches, and all affiliates worldwide in determining annual gross revenues.)

- If “yes,” proceed to question 2.
 - If “no,” reporting executive compensation to ODOT will not be required.
2. Does the public have access to information about the compensation of the senior executives in your organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986? (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <https://www.sec.gov/answers/execomp.htm>.)
- If “yes,” reporting executive compensation to ODOT will not be required.
 - If “no,” within fourteen (14) calendar days of execution of this Agreement and annually thereafter, your organization shall report the names and total compensation for each of your organization’s five most highly compensated executives for the preceding completed fiscal year by completing the following online form:

Federal Transparency Subaward Report:
<https://forms.office.com/g/WNVpUFmdki>

(*Total compensation* means the cash and noncash dollar value earned by the executive during your organization’s preceding fiscal year. For more information on the compensation information required see [17 CFR 229.402\(c\)\(2\)](#).)

D. Subrecipient information to be provided to ODOT: By signing this Agreement with ODOT, your organization certifies it has reviewed and confirmed that the following subrecipient information included in this Agreement is true and accurate at the time of execution:

- Your organization’s UEI.
- Whether your organization is required to report executive compensation to comply with the Federal Transparency Act.

E. Technical assistance: If you have any questions about this Exhibit, email the ODOT Federal Funding Manager at: ODOTFederalFunding@odot.oregon.gov.