

Oregon Department of Transportation
LOCAL AGENCY AGREEMENT
SURFACE TRANSPORTATION PROGRAM – URBAN
Salem Regional Traffic Signal Control Center
Federal Fiscal Year 2017 and 2018

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;” and the CITY OF SALEM, acting by and through its designated 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 agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

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 fund the Salem Regional Traffic Control Center, hereinafter referred to as “Project.” A work plan and budget for said Project is attached hereto, marked “Exhibit A,” and by this reference made a part hereof. Agency Program Years 2017-2018 and 2018-2019 (funds from Federal Fiscal Year 2017) funding will become available for reimbursement when Federal Highway Administration (FHWA) has approved the funding, as stated in State Obligations, paragraph 1.
2. The Project will consist of all work necessary to operate the Salem Regional Traffic Signal Control Center, which provides a regional focal point for the computerized control of all traffic signals within the Urban Growth Boundary of the Salem-Keizer Metropolitan Area.
3. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$678,372, which is subject to change. STP-Urban (STP-U) funds for this Project will be limited to \$510,000. The Project will be financed with STP funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

4. State will submit the requests for federal funding to FHWA. The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
5. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
6. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment, or July 1, 2019, whichever is sooner.

STATE OBLIGATIONS

1. State shall submit a request to FHWA for approval of federal-aid participation in all phases of the work under this Project. No work shall proceed until said approval has been obtained. State's Region 2 Local Agency Liaison, or designee, shall notify Agency in writing when authorized to proceed with the work.
2. State shall, upon receipt of monthly-approved, itemized invoice of actual costs incurred by Agency on behalf of the Project, reimburse Agency for 89.73 percent (89.73%) of the full amount (or the federal-aid participating amount), up to the maximum amount of \$510,000 for Federal Fiscal Year 2017.
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 not proceed with any federal-aid participation phase of the work prior to receiving written authorization from State's Local Agency Liaison, or designee. All work and records of such work shall be in strict compliance with federal statutes, rules and regulations.
2. 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 on behalf of the Project.

3. Agency shall perform all work and services outlined in the Work Program section of the attached Exhibit A, and shall confer with State during the Project whenever deemed necessary.
4. Agency shall, in accordance with Title 23, Code of Federal Regulation (CFR) part 940.11, conduct a systems engineering analysis for any upgrades or added new technology to the current traffic control system.
5. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State's Local Agency Liaison, or designee.
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 costs incurred by Agency on behalf of the Project directly to State's Local Agency Liaison, or designee, for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Agency's actual costs eligible for federal-aid participation shall be those allowable under the provisions of the Federal Office of Management and Budget (OMB) Circulars A-87 (Cost Principles for State, Local, and Indian Tribal Governments), and A-102 (Grants and Cooperative Agreements with State and Local Governments), and shall be reimbursed at a ratio of 89.73 percent (89.73%) (federal fund prorate) of covered Project costs. Under no conditions shall State's obligations exceed \$510,000, including all expenses. Travel expenses will not be reimbursed.
9. Agency agrees to pay all required match of the federal funds, any non-participating costs, and as outlined in the Terms of Agreement, paragraph 3.
10. 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.

11. 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; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount will be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. 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.
13. Information required by 2 CFR 200.331(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.
14. As required by 2 CFR 200.331(a)(4), the indirect cost rate for this Project at the time the Agreement is written is:

Planning and Development	149.93%
Engineering	126.73%
Transportation	150.12%
Waste Water Treatment	124.34%
Operations	155.68%
Parks and Recreation	123.38%
- 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.
15. Agency shall involve State using the current indirect cost rate on file with State at the time the work is performed, except that if Agency has selected zero percent (0%), Agency shall invoice State using the zero percent 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.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency 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 State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, 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 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. State's contact for this Project is Lee Cronemiller, Local Agency Liaison, ODOT, Region 2, 455 Airport Road SE, Building B, Salem, Oregon 97301; phone: (503) 986-2779; email: lee.m.cronemiller@odot.state.or.us, 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.
5. 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; phone: (503) 588-6211; email: 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.
6. 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.

7. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Agency to State. 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 will 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, will be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement will not constitute a waiver by State of that or any other provision.

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 2015-2018 Statewide Transportation Improvement Program (STIP), (Key No. 19229) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently by amendment to the STIP).

SIGNATURE PAGE FOLLOWS

CITY OF SALEM, by and through its
designated officials

By _____
City Manager

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, OR 97301
Phone: (503) 588-6211
Email: khottmann@cityofsalem.net

State Contact:

Lee Cronemiller, Local Agency Liaison
ODOT, Region 2
455 Airport Road SE, Bldg. B
Salem, OR 97301
Phone: (503) 986-2779
Email: lee.m.cronemiller@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date _____

By _____
State Traffic Engineer

Date _____

By _____
Region 2 Manager

Date _____

By _____
Area 3 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

EXHIBIT A
Salem Regional Traffic Control Center
Work Plan and Budget

Program Years:
July 1, 2017 – June 30, 2019

I. INTRODUCTION

The Regional Traffic Signal Control Center of the City of Salem provides a focal point for the computerized control of all traffic signals within the Urban Growth Boundary of Salem-Keizer. The ultimate goal of this Project is to provide the operational work force to design, implement, operate, and maintain an expanded system of traffic signals within the various jurisdictions, including the City of Salem, City of Keizer, Marion County, Polk County, and the State of Oregon, from one centralized location.

July 1, 2017 through June 30, 2019, will be the nineteenth (19th) and twentieth (20th) years of this center's operation. The 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 staff charges time to this program when appropriate, including the City Traffic Engineer, a Signal Operations Field Supervisor, and other engineering design staff. Work will continue to focus on the current traffic signal system within the City of Salem. As added signals have come on line, the system will be expanded. Assistance will be provided to the City of Keizer, Marion County, and Polk County, as needed.

II. GOALS AND OBJECTIVES

Goal 1: To provide a focal point for intergovernmental cooperation to ensure the existence and expansion of a Regional Traffic Signal Control System that will operate with efficiency and safety within the entire Salem Urban Area for years to come.

Objectives:

- A. Provide intergovernmental coordination within, and to expand the present boundaries of the traffic signal control system including facilities on roads under the jurisdiction of the State of Oregon, City of Keizer, and Marion and Polk Counties.
- B. Provide intergovernmental coordination to ensure proper design of all new or revised traffic signals so they will be compatible with the central traffic control system.

- C. Provide intergovernmental coordination to ensure proper operation and compatible signal timing along arterial streets through and between different jurisdictions.
- D. Coordination of enhancements, revisions, and expansion to the system wherein all members of the region are involved.

Goal 2: To provide an economical and efficient regional traffic signal control system for all users living within or traveling through the Urban Growth Boundary of the cities of Salem and Keizer.

Objectives:

- A. Plan the expansion of the regional traffic signal control system to include all major arterial streets in and through the region, including State of Oregon highways.
- B. Develop and plan new timing schemes for the existing system as well as new arterial street expansions.
- C. Investigate, respond to, and resolve complaints received regarding the operation or signal timing of the system.
- D. Investigate various modifications to the traffic control strategy to improve the operation of the system.
- E. Provide maintenance to the operating system to ensure peak hour arterial traffic flows are sustained for maximum capacity.

Goal 3: To maximize the efficiency of the traffic signal system through implementation of Intelligent Transportation System (ITS) Technology

Objectives:

- A. Employ the newest technologies, as resources are available and applicable to the Salem Urban Area, to add efficiencies and customer service opportunities to the operations of the regional traffic signal control system. Examples include using video camera detection technology for controlling signals and installing fiber optic interconnects.
- B. Investigate and implement, as appropriate, the sharing of video camera detection images with the public over the Internet.
- C. Investigate new ITS technologies to determine if a practical application can be made to improve effectiveness of the regional traffic control system.

- D. Investigate various funding sources to see if any can be acquired or matched for use of ITS technology.
- E. Budget, design, and implement ITS modifications to the Central Computer System as funds are identified.
- F. Pursue the implementation of Automated Traffic Signal Performance Measures (ATSPM). ATSPMs consist of a high-resolution data-logging capability added to existing traffic signal infrastructure and data analysis techniques.

Goal 4: Cooperate with jurisdictions identified in Goal 1, Objective A to enhance knowledge and operation of the system.

Objectives:

- A. Assist users in resolving program problems or features of the software.
- B. Enhance the capacity of the Central Signal System using the information gained through other users.
- C. Work towards linking each jurisdiction's Central Signal Systems so they can communicate and share data via National Transportation Communications for Intelligent Transportation System (ITS) Protocol (NTCIP) standards.

III. WORK PROGRAM

The following elements will be incorporated into the work program to accomplish the goals of the Project.

A. Traffic Signal Timing/Software Enhancement

- 1. Review and respond to citizen complaints received about system operation.
- 2. Maintain and adjust traffic signal timing to provide maximum progression and minimal delay to a majority of users. This requires the application of traffic engineering principles along with several computer programs 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 system.
- 4. Investigate, plan, and implement, as appropriate, system migration to NTCIP standards to enhance connectivity between jurisdictional traffic control systems.
- 5. Investigate implementing measures 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 the maintenance and operation of the traffic signal system.
2. Plan and design for the expansion of the system to include all existing and new traffic signals within the entire Salem-Keizer Urban Growth Boundary.
3. Coordinate with all governmental entities to work toward establishing agreements or contracts to possibly maintain and operate all of the signals within the region. This includes the last remaining portions of the state highway system yet to be taken over: Mission Street SE from 17th Street to Interstate 5.
4. Coordinate with other regional partners to plan the expansion and operation of the signal system.

C. Intelligent Transportation System (ITS) Technology

1. Investigate various facets of ITS technology to incorporate into the signal system, including video surveillance, fiber optic communication, traffic responsive detection, etc.
2. Budget, design, and cause the construction of enhancements to the system.
3. Provide training and education for the installation and maintenance of ITS technology.
4. Make available to the public via an Internet connection, video camera detection images of available intersections.

D. Traffic Signal Design and Coordination

1. Design, or coordinate the design and development of new traffic signals or systems within the region to ensure compatibility and proper connection to the system.
2. Ensure adequate progression can be achieved for any new proposed signals and the revision of any existing signals or signal systems.
3. 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 and integrate software and data storage requirements of Regional Congestion Management System (CMS) traffic counting data from designated regional traffic signal loop and video counters and detectors.

IV. WORK PROGRAM

The following table represents the estimated budget for the Agency Program Years 2017-2018 and 2018-2019. The actual expenditure of personal services, training, and permits and licensing may vary depending on needs, but the STP-U funds will not exceed \$510,000.

Salem Traffic Control Center Budget Program Year 2017-2019*			
Line Item	STP-U Funds	Agency Match	Total
Personal Services	\$504,075	\$167,822	\$671,897
409 Training	\$4,670	\$435	\$5,105
416 Permits and Licensing	\$1,255	\$115	\$1,370
Fund Source Tools	\$510,00	\$168,372	\$678,372

*As listed in Statewide Transportation Improvement Program (STIP) 2015-2018, Key No. 19229

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; | 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, |
| 2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against | |

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.

II. 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.

III. 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.

IV. 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.

V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his 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, creed, color, sex or national origin 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, creed, color, sex or national origin.

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, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. 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 his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has 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.

VI. 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 the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, 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.

VII. 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.

**FOR INQUIRY CONCERNING
DEPARTMENT'S DBE
PROGRAM REQUIREMENT
CONTACT OFFICE OF CIVIL
RIGHTS AT (503)986-4354.**