

W-3-E-1.

Memorandum Date: 5/1/2007

Order Date: 5/23/2007

TO: Board of County Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Frank Simas
Right of Way Manager

AGENDA ITEM TITLE: ORDER/IN THE MATTER OF ENTERING INTO A
REVENUE AGREEMENT WITH ODOT FOR RIGHT OF
WAY & SURVEY SERVICES IN AN AMOUNT NOT TO
EXCEED \$130,000

I. MOTION

Move approval of Board Order authorizing Public Works staff to enter into a revenue agreement with ODOT for Right of Way and Survey Services in an amount not to exceed \$130,000 and authorizing the County Administrator to sign the agreement.

II. DISCUSSION

A. Background / Analysis

ODOT has requested to retain the services of the County for right of way services, including, but not limited to, Right of Way Engineering, Right of Way Appraisal and Acquisition, and Survey Services for projects on Oregon 42, Oregon 38, and US 101 which are all part of the state highway system under the jurisdiction of the Oregon Transportation Commission. The work to be performed by the County is scheduled to begin June 1, 2007, which creates a need to expedite the execution of an agreement for these services.

ORS 190.110 grants the authority for state agencies to enter into agreements with units of local government. It has been customary for State and local governments to work cooperatively on road projects. The State will reimburse the County for all costs.

If successful, staff is asking the Board to delegate contract signature authority to the County Administrator for the contract that would be forthcoming.

C. Recommendation

The Board's options are to approve the motion stated above, to deny the motion, or to take some other course of action. Staff is recommending that the Board approve the motion.

III. ATTACHMENTS

Draft of Intergovernmental Agreement for Right of Way & Survey Services

**IN THE BOARD OF COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

ORDER NO. _____

) **IN THE MATTER OF ENTERING INTO A REVENUE**
) **AGREEMENT WITH ODOT FOR RIGHT OF WAY &**
) **SURVEY SERVICES IN AN AMOUNT NOT TO**
) **EXCEED \$130,000**
) _____
)
)
)
)
)

WHEREAS, ODOT has requested to retain the services of the County for right of way services, including, but not limited to, Right of Way Engineering, Right of Way Appraisal and Acquisition, and Survey Services for projects on Oregon 38, Oregon 42, and US 101 which are all part of the state highway system under the jurisdiction of the Oregon Transportation Commission; and

WHEREAS, The work to be performed by the County is scheduled to begin June 1, 2007, which creates a need to expedite the execution of an agreement for these services; and

WHEREAS, ORS 190.110 grants the authority for state agencies to enter into agreements with units of local government. It has been customary for State and local governments to work cooperatively on road projects; and

WHEREAS, The State will reimburse the County for all costs in accordance with LM21.124 and the work is scheduled to begin June 1, 2007; **NOW THEREFORE, BE IT**

ORDERED, that Public Works is authorized to enter into a revenue agreement with ODOT for Right of Way & Survey Services in an amount not to exceed \$130,000; **AND, BE IT**

ORDERED, that the County Administrator is authorized to execute an agreement in substantially the form of the attached agreement.

DATED this _____ day of _____ 2007.

Faye Stewart, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 5-15-07 Lane County

OFFICE OF LEGAL COUNSEL

**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY & SURVEY SERVICES
LANE COUNTY**

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 "ODOT"; and LANE COUNTY, acting by and through its Board of Commissioners, hereinafter referred to as "County," collectively referred to as the "Parties."

RECITALS:

1. Oregon 38: Umpqua Highway (No. 45), Oregon 42: Coos Bay – Roseburg Highway (No. 35) and US 101 Oregon Coast Highway (No. 9) are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
2. By the authority granted in ORS 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
3. Under such authority, ODOT wishes to retain the services of County for right of way services, including, but not limited to, Right of Way Engineering, Right of Way Appraisal and Acquisition, and Survey services, hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project".
4. State has approved OR 42: Hoover Hill to Lookingglass Creek Paving, Key No. 13801; OR 42: Hoover Hill Passing Lane (Winston), Key No. 13820; OR 38: Elkton Slide – Hancock Mountain Road Paving, Key No. 13802; OR38: Charlotte and Luder Creek Culverts Replace, Key No. 13073; OR 38: US 101 to CORP Xing Access Management, Key No. 13826; and US 101: Reedsport to Winchester Bay Paving, Key No. 13769, as part of the 2006-2009 Statewide Transportation Improvement Program (STIP). This Agreement will address the services, referenced in Recitals, Paragraph 3, to be performed as part of these projects and funding for said services.

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, ODOT wishes to retain the services of County for right of way services, including but not limited to, Right of Way Engineering, Right of Way Appraisal and Acquisition, and Survey services identified in Recitals, Paragraph 3 and shown in Special Provisions Exhibit A, attached hereto and by this reference made a part hereof. The services will be performed for each of the projects listed in

Recital 4. Under no conditions shall ODOT's obligations for said services exceed a maximum amount of \$130,000, including all expenses, unless agreed upon by both parties.

2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the project and final payment or three (3) calendar years following the date all required signatures are obtained, unless extended by a fully executed amendment to this Agreement.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A .
4. It is further agreed both parties will strictly follow the rules, policies and procedures of the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" as amended, ORS Chapter 35, ODOT Right of Way Manual, ODOT Right of Way Engineering Manual, ODOT Right of Way and Rail/Utility Coordinator, Contractor Services Guide and Federal Highway Administration (FHWA) Federal Aid Policy Guide.

COUNTY OBLIGATIONS:

1. County shall perform the work described for it in Special Provisions Exhibit A.
2. County shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from ODOT.
3. County 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.
4. County shall submit a monthly status report of the work performed and include this Agreement number. The status report shall be sent to ODOT's Project Manager for review.
5. County's right of way contact person for this Agreement is Frank Simas, Lane County Right of Way Manager, or assigned designee, 3040 Delta Highway North, Eugene, OR 97408-1636; (541) 682-6980.

ODOT OBLIGATIONS:

1. ODOT shall perform the work described for it in Special Provisions Exhibit A.
2. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within

ODOT's current appropriation or limitation of current budget. ODOT is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the project up to its maximum.

3. ODOT's Project manager for this Agreement is Gary Taylor, Region 3 Right of Way & Survey Manager, 3500 NW Stewart Parkway, Roseburg, OR 97470-1600; (541) 957-3559.

PAYMENT FOR SERVICES and EXPENDITURES:

1. In consideration for the services performed by County, ODOT agrees to pay or reimburse County a maximum amount not to exceed \$130,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to County in accordance with the current State Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, state funds. Payment in state and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both parties.
2. ODOT agrees to reimburse salaries and payroll reserves of County employees working on project, direct costs, costs of rental equipment used, and per-diem expenditures.
3. County shall present invoices for 100 percent of actual costs incurred by County on behalf of the project directly to ODOT's right of way contact for review and approval. Such invoices shall be in a form identifying the project and agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one month duration, based on actual expenses incurred.
4. Upon completion of right of way services and receipt from County of a final itemized statement, ODOT shall pay an amount which will equal 100 percent of the final total actual cost.

GENERAL PROVISIONS:

1. This Agreement may be terminated by mutual written consent of both parties.
2. ODOT may terminate this Agreement effective upon delivery of written notice to County, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

- b. If County 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 ODOT fails to correct such failures within ten (10) days or such longer period as may be authorized by ODOT.
 - c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.
 - d. 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 if ODOT is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
4. County acknowledges and agrees that ODOT, the Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of County which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
5. Both parties agree to 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 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 , which hereby are incorporated by reference. Without limiting the generality of the foregoing, both parties expressly agree 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.
6. All employers, 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. Both parties shall ensure that each of its subcontractors complies with these requirements.
7. Because federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
8. Because federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the ODOT, shall assume sole liability

for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the ODOT to return funds to the Federal Highway Administration, hold harmless and indemnify the ODOT 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 shall 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.

9. 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.
10. 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 ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

These Projects are in the 2006-2009 Statewide Transportation Improvement Program, (Key Numbers 13820, 13802, 13073 and 14816) that was approved by the Oregon Transportation Commission on August 17, 2005 (or subsequently approved by amendment to the STIP).

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On July 7, 2005, the Director and Deputy Director, Highways approved Subdelegation Order No. 4, in which the Director and Deputy Director, Highways delegates authority to the Technical Services Manager/Chief Engineer to approve and execute all agreements pertaining to real property transactions.

Pursuant to a Letter of Authority dated February 22, 2002, the Technical Services Manager/Chief Engineer authorized the Right of Way Manager to approve and execute with other governmental jurisdictions to employ Right of Way Section Staff.

LANE COUNTY, by and through its Board
of Commissioners

By _____
Chairperson

Date _____

By _____
Commissioner

Date _____

By _____
Commissioner

Date _____

By _____
Commissioner

Date _____

By _____
Commissioner

Date _____

APPROVED AS TO FORM:

By _____
County Counsel

Date _____

County Contact:
Lane County
Attn: Frank Simas, RW Manager

STATE OF OREGON, by and through its
Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 3 Manager

Date _____

By _____
Region 3 Technical Services Manager

Date _____

By _____
Region 3 Right of Way & Survey Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

3040 Delta Highway North
Eugene, OR 97408-1636

**SPECIAL PROVISIONS EXHIBIT A
RIGHT OF WAY & SURVEY SERVICES
Agreement No. 24088**

Things to be done by ODOT or County for the following projects:

OR 42: Hoover Hill to Lookingglass Creek Paving, Key No. 13801; OR 42: Hoover Hill Passing Lane (Winston), Key No. 13820; OR 38: Elkton Slide – Hancock Mountain Road Paving, Key No. 13802; OR38: Charlotte and Luder Creek Culverts Replace, Key No. 13073; OR 38: US 101 to CORP Xing Access Management, Key No. 13826; and US 101: Reedsport to Winchester Bay Paving, Key No. 13769.

A. Preliminary Phase

1. County shall provide preliminary cost estimates.
2. County shall make preliminary contacts with property owners.
3. ODOT shall gather and provide data for environmental documents.
4. ODOT shall develop access and approach road list.
5. ODOT shall help provide field location and project data.

B. Acquisition Phase

1. General:
 - a. When doing the Acquisition work, County shall provide ODOT with a monthly status report of the project. Said monthly status report shall include this Agreement number.
 - b. Title to properties acquired shall be in the name of the ODOT.
 - c. Prior to the initiation of acquisitions, ODOT shall adopt a resolution of intention and determination of necessity in accord with ORS 35.610, authorizing acquisition and condemnation.
2. Legal Descriptions:
 - a. ODOT shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
 - b. ODOT shall provide construction plans and cross-section information for the project.
 - c. ODOT shall write legal descriptions and prepare right of way maps.

d. ODOT shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. County shall provide preliminary title reports, if ODOT determines they are needed, before negotiations for acquisition commence.
- b. ODOT shall determine sufficiency of title (taking subject to).
- c. ODOT shall conduct Level 1 testing for presence of hazardous material.

ODOT shall conduct reasonable testing up to Level 2, if requested .

If contamination is found, a recommendation for remediation will be presented to ODOT.

d. ODOT shall be responsible for any necessary remediation.

4. Appraisal:

- a. County shall conduct the valuation process of properties to be acquired.
- b. ODOT shall recommend just compensation, based upon a review of the valuation by qualified personnel.
- c. Property trades, construction obligations, and zoning or permit concessions are to be evaluated as part of the Just compensation offer.

5. Negotiations:

- a. County shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Conveyances taken for more than the approved figure will be documented by an Administrative Justification for the increase in compensation. If ODOT performs this function, it will provide the County with all pertinent letters, negotiation records and obligations incurred during the acquisition process.

6. Relocation:

- a. County shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the project.
- b. ODOT shall make all relocation and moving payments for the project.
- c. ODOT shall perform the relocation appeal process.

C. Closing Phase

1. ODOT shall close all transactions. This includes drawing deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If County is handling the closing, ODOT shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the County.

D. Property Management

1. ODOT shall take possession of all the acquired properties.
2. ODOT shall dispose of all improvements and excess land.

E. Condemnation

1. ODOT may offer mediation if parties have reached an impasse.
2. ODOT shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. ODOT shall perform all legal work related to the condemnation process.
4. ODOT shall perform all litigation work related to condemnation.

For purposes of Exhibits B and C, references to Department shall mean ODOT, references to Contractor shall mean County, and references to Contract shall mean Agreement.

EXHIBIT B (Local Agency or State Agency) to Agreement No. 24088

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 – to Agreement 24088
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.

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) 986-3400) 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

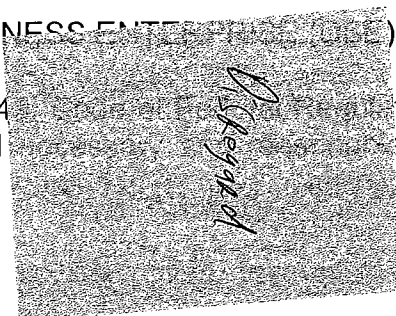
During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

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 4, Oregon Administrative Rules, Part 26, Contractor shall agree to abide by and take all necessary 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.