

Oregon Department of Transportation  
LOCAL AGENCY CERTIFICATION PROGRAM AGREEMENT  
Multnomah 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 "State"; and Multnomah County, acting by and through its elected officials, hereinafter referred to as "County," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110 and 283.110, 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.
2. Under the authority of Section 106 of Title 23 United States Code (USC), and as explained in the 1999 Stewardship Plan between State and the Federal Highway Administration (FHWA), State, in a letter dated November 17, 1992, notified FHWA of its decision to request State's exemption from required FHWA review and approval of Plans, Specifications and Estimates (PS&E) for all non-National Highway System (NHS) projects, regardless of size. By the authority granted in the Stewardship Plan, State can delegate authority for approvals on PS&E on local agency projects, but cannot delegate its responsibility. State remains responsible for ensuring that all federal requirements are met.
3. State, pursuant to authority under Section 106 of Title 23 USC and in accordance with the 1999 Stewardship Plan, in a letter to FHWA dated December 27, 2004, requested FHWA to allow State to continue developing, defining and implementing the Certification Program. FHWA, in a letter to State dated December 29, 2004, concurred with State's request to proceed with Certification.
4. The Local Agency Certification Program (Certification Program) allows State to certify a local agency's procedures and delegates authority to the certified local agency to administer federal-aid projects that are not on the NHS.

**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**

As used in this Agreement, abbreviations shall mean as follows:

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AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act
AKA	Also Known As
BOLI	Oregon State Bureau of Labor and Industries
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
DOJ	Department of Justice
EEO	Equal Employment Opportunity
FAPG	Federal-Aid Policy Guide
FHWA	Federal Highway Administration
ISTEA	Intermodal Surface Transportation Efficiency Act
NHS	National Highway System
OAR	Oregon Administrative Rules
ODOT	Oregon Department of Transportation
OJT	On-the-Job Training
OMB	Office of Management and Budget
ORS	Oregon Revised Statutes
PS&E	Plans, Specifications and Estimates (includes schedule)
PTESC	Professional, Technical and Expert Services Contracts (This term, for the purpose of this Agreement, shall be synonymous with State's term "personal services contracts")
USC	United States Code
USDOT	United States Department of Transportation

**Certification**

1. County is currently pursuing certification in: consultant selection; design; bridge design, advertising, bid and award; and construction contract administration. As a result, this Agreement grants authority to County, for those test projects identified under Paragraph three (3) of this Section, to select consultants, design, design bridges, advertise, bid and award, make contractor payments, provide construction contract administration, and ensure a construction quality assurance and quality control program for County's federal-aid non NHS projects. State shall retain responsibility for all environmental review, permitting, agreements or approvals that are necessary as a result of the federal action. State shall administer on behalf of County, State's Civil Rights plan including the Disadvantaged Business Enterprise (DBE) program, Equal Employment Opportunity (EEO) program, and On-The-Job Training (OJT)/APPRENTICESHIP program. Professional, Technical and Expert Services Contracts (PTESC) shall conform to FHWA requirements and all requirements outlined under the subtitle "Professional, Technical and Expert Services Contracts" shown below in this Agreement.

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2. County understands and agrees that only through the County's Land Use and Transportation Program (LUTP), a division of the County's Department of Community Services; has the County met all certification criteria and that full certified status is conditioned upon County's successful completion of test projects and written approval from State. County also understands and agrees that while federal-aid projects may originate from one or more of County's other divisions or departments, only LUTP and County's Certification Program Manager shall provide quality control, oversight and all such federal-aid projects and ensure that rules, regulations, and processes outlined in this Agreement are followed and have final approval authority; and LUTP's approval shall be obtained prior to any further County action through its Board of Commissioners or other appropriate County officials to authorize or approve any such federal-aid project.
3. County understands and agrees that it must successfully perform two (2) to four (4) test projects, which may be select project phases, and until successful, County shall retain conditional certified status. State will conduct performance measurement and quality assurance reviews during all phases of the test projects. At the conclusion of the second test project and each subsequent test project, an assessment will be made by County and State to determine whether County should proceed to full certified status or continue with another test project. Upon successful completion of the test projects and written approval by State, County shall be fully certified to administer future federal-aid projects that are not on the NHS in accordance with this Agreement.
4. State retains its responsibility to FHWA for the administration of all federal-aid projects. If requested by County, or if deemed necessary by State in order to meet its obligations to FHWA, State will act for County in other matters pertaining to projects. Prior to taking such action, State will confer with County concerning actions necessary to meet federal obligations.
5. State and County shall each assign a liaison to coordinate activities under this Agreement and assure that the interests of both Parties are considered during all phases of any projects. State's Regional Local Agency Liaison shall provide program advice and support as needed throughout all projects.
6. County understands and agrees that final approval for full certified status is conducted through the State's Certification Program Manager in conjunction with State's Region Manager and may be rescinded at any time upon County's request or if, in the opinion of the State's Certification Program Manager and State's Region Manager, it is necessary to do so. The rescission may be applied to all or part of the programs or projects approved under the Certification Program.

7. State shall conduct random oversight reviews on County's Certification Program and projects through the State's Local Government Section at least once every two (2) years after County has been awarded full certified status. State may, at any time, initiate a formal audit using professional auditing standards of a federal-aid project.
8. The terms of this Agreement shall begin on the date all required signatures are obtained and shall terminate twenty (20) years following the date all required signatures are obtained, unless extended by an executed amendment. The Agreement may also be terminated upon County's or State's written request pursuant to the "Termination" Section of this Agreement.

### **Program Administration**

Projects must be consistent with the Regional Transportation Plan and appear in the Metropolitan Planning Organization's Transportation Improvement Program and the State Transportation Improvement Program if the projects receive federal funding through Title 23 Code of Federal Regulations (CFR).

### **Project Funding Request**

1. County shall submit a separate agreement to State for each project, hereinafter referred to as "Supplemental Project Agreement." The Supplemental Project Agreements will be signed by both County and State before any federal-aid project work begins. At least one (1) of County's approval authorities identified in "Signature Authorities" Section of this Agreement, is required to sign the Supplemental Project Agreements. The Supplemental Project Agreements will, at a minimum, cover specific project details including project name, County's project manager's title or designee, description of work, schedule and funding sources. The Supplemental Project Agreements shall include services to be provided by State, County, or others.
2. State shall submit a separate written project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning) b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design) c) Right of Way Acquisition, d) Utilities e) Construction Advertising, Bid and Award, and f) Construction. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at County expense. County shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify County in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations. The federal funding for projects

covered by individual Supplemental Project Agreements is contingent upon approval by FHWA.

3. County shall, on any project that uses federal funds in project development, submit final PS&E documents, construction schedule, environmental requirements and right of way certification to State's Regional Local Agency Liaison at least five (5) weeks prior to bid opening. State shall review such submittals and then submit a request to FHWA for approval of federal-aid participation for the construction phase when federal-aid participation is desired in this phase.

### **Finance**

1. Federal funds shall be applied toward individual project costs at the current federal-aid matching ratio, unless otherwise agreed to and allowed by law. County shall be responsible for the entire match amount for the federal funds and any portion of the individual projects, which are not covered by federal funding unless otherwise agreed to and specified in the Supplemental Project Agreements. County must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. State considers County a subrecipient of the federal funds it receives as reimbursement under the Supplemental Project Agreements. The Catalog of Federal Domestic Assistance (CFDA) number and title for these Projects is 20.205, Highway Planning and Construction, unless otherwise indicated in the individual Supplemental Project Agreements.
2. County shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If County has not repaid any non-participating costs, future allocations of federal funds, or allocations of State Highway Trust Funds to County may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will be negotiated between County and State.
3. County agrees that costs incurred by State and County for services performed in connection with any phase on any individual federal-aid project shall be charged to the project, unless otherwise mutually agreed upon by the Parties. State will send an estimate of anticipated project service costs to County at thirty (30) percent plans review. Costs will be negotiated and reflected in the Supplemental Project Agreements.
4. If County makes a written request for the cancellation of a federal-aid project, County shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one

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hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or County, County shall bear all costs, whether incurred by State or County, either directly or through contract services, and State shall bear any State administrative costs incurred.

5. County shall follow the requirements stated in the Single Audit Act. Local governments receiving \$500,000 or more in federal funds must follow the requirements stated in the Single Audit Act. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in OMB Circular A-133, requires local governments to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federal-aid programs in which County participates. The cost of this audit can be partially prorated to the federal program.
6. County shall present invoices for one hundred (100) percent of actual costs incurred by County on behalf of each project directly to State's Regional Local Agency Liaison for review, approval and reimbursement to County. Such invoices shall a) have an invoice number, b) reference a vendor number, c) include a "remit to" name and address, d) reference this Certification Program Agreement No. 26,226, e) include State's Expenditure Account number f) reference State's Supplemental Project Agreement number, g) identify the project by the project name in the Supplemental Project Agreement, and h) itemize and explain all expenses for which reimbursement is claimed. Invoices for services including, but not limited to, preliminary engineering and construction engineering shall be presented for periods of not less than one-month duration, based on actual expenses to date. (See paragraph 7 of Construction Activities and Administration of this Agreement for the construction contractor invoice period.) All invoices received from County must be approved by State's Regional Local Agency Liaison prior to payment. County's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR Parts 1.11, 140, and 710. Final invoices shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: a) award date of a construction contract for preliminary engineering b) last payment for right of way acquisition and c) contract completion for construction. Partial invoices (progress payment) shall be submitted to State within three (3) months from the date that costs are incurred. Final invoices` submitted after the three (3) months shall not be eligible for reimbursement. If County has an approved or certified indirect cost rate proposal which applies to federal-aid projects, as defined in Title 2 CFR 225, that rate must be clearly outlined in any invoices, either as a line item or submitted in the invoice transmittal cover letter.

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7. County shall, upon State's request for reimbursement, in accordance with Title 23, CFR 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to County if any of the following events occur:
  - a) Right of way acquisition is not undertaken utilizing federal-aid funds or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. County may submit a written request to State's Regional Local Agency Liaison for a time extension beyond the twenty (20) year limit with no repayment of Federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
  - b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. County may submit a written request to State's Regional Local Agency Liaison for a time extension beyond the ten (10) year limit with no repayment of Federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
8. County shall maintain all project documentation in keeping with State and FHWA standards and specifications for all individual projects. This shall include, but not be limited to, daily work records, quantity documentation, material invoices, quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.
9. State shall submit all claims received from County for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay County all reimbursable costs on each project. State may request from County a statement of costs to date at any time by submitting a written request. When the actual total cost of each project has been computed, County shall furnish State with an itemized statement of final costs. County shall pay one hundred (100) percent of the final total actual project costs. The actual cost of services provided by State will be covered in the Supplemental Project Agreements.
10. County agrees to refund to State all federal funds paid to County, if FHWA requests such funds from State, because County has not followed a process, rule or procedure outlined in County's Procedures, this Agreement or Supplemental Project Agreements. Refund from County shall be within thirty (30) days upon State notification. If County does not repay State within thirty (30) days, State shall

withhold County's proportionate share of State Highway Trust Fund distribution until repayment has been made in full.

11. County shall, upon completion of each individual federal-aid project that constructs or improves any facility that would not be eligible for State Highway Trust Fund moneys subject to Oregon Constitution, Article IX, section 3a, complete and file with the appropriate County Clerk, an Acknowledgment of Federal Assistance. The Acknowledgement of Assistance is attached as Exhibit A. In such circumstances, the Supplemental Project Agreement will include this Exhibit for that project.

## **Standards**

1. In accordance with the County's standard contract specifications and design standards, County shall include in the title sheet of the plans the following: federal-aid project number, location sketch, title of project, project limits, plan sheet index, applicable Oregon Standard Drawings, and a provision for approving official(s) signature(s) and date(s) and scale(s). County agrees that PS&E and construction plans shall, at a minimum, be in conformance with the current, State approved edition of the following unless otherwise requested by County and approved by State, which are incorporated hereto by reference, and made a part of this Agreement:
  - a) County's *Public Improvement Design Standards Manual*;
  - b) County's Standard Construction Specifications;
  - c) All AASHTO policies and guidelines;
  - d) *Oregon Standard Specifications for Construction* (APWA Oregon Chapter) or County's Standard Provisions as approved by ODOT;
  - e) *Manual on Uniform Traffic Control Devices* and Oregon Supplements;
  - f) *Transportation Research Board's Highway Capacity Manual*;
  - g) Local Agency Certification Procedures found in the *Local Agency Guidelines Manual*;
  - h) Title 23 and Title 49, USC, Highways and Regulations;
  - i) *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*;
  - j) *ODOT Right of Way Manual*;
  - k) *ODOT Bridge Cost Data Manual*;
  - l) *ODOT Bridge Element Coding Guide*;
  - m) *ODOT Bridge Section Load Rating Procedures (Tier 1, 2004)*, as amended by *ODOT Load Rating Technical Memos*; or *Tier 2* (for bridges designed using Load Resistance Factor Design);
  - n) *Oregon Bicycle and Pedestrian Plan*; and
  - o) *Bridge Design and Drafting Manual*.



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2. County agrees that design standards for all projects on the Oregon State Highway System shall be in compliance with standards specified in State's current edition of the *Highway Design Manual* and related references, which are incorporated hereto by reference and made a part of this Agreement. County agrees construction plans shall be in conformance with the standard practices of State for plans prepared by its own staff.
3. County shall verify that the installation of traffic control devices meets the warrants prescribed in the *Manual on Uniform Traffic Control Devices and Oregon Supplements*. County further understands and agrees that any installation of traffic control devices on or adjacent to State facilities requires the approval of the State Traffic Engineer or State's Region Traffic Engineer as described in the *ODOT Traffic Signal Policy and Guidelines* and the *ODOT Traffic Manual*.
4. The standard unit of measurement for all aspects of the project shall be English Units. All project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.
- 5a. County shall, on all National Scenic Byways and All-American Road projects, include the America's Byways™ logo in publications, videos, and on other materials produced with National Scenic Byway Program funds. Where possible and in addition to the logo, County shall include the following statement: "Funded in part by FHWA".
- b. County shall make photos, brochures, plans, designs, and videos funded with the National Scenic Byways Program funds available to the National Scenic Byways Program for use in presentations, publications, and posting on the websites.
- c. The value of the required match on Scenic Byway and All-American road projects may come from donations or contributions. County shall be responsible for documenting the value of donations or contributions. County shall obtain approval from State's Transportation Program Office for any donations or contributions before the project begins. The services provided by County and match donations or contributions shall described in an attachment to the Supplemental Project Agreement.
- 6a. County shall, for On-System Bridge projects, be responsible for funding the road approach work on individual Supplemental Project Agreements. County shall submit a letter identifying the funding source for this work six (6) weeks prior to advertisement for bid opening of individual On-System Bridge projects.

- b. State shall provide free bridge design pursuant to ORS 366.155(1)(h), only when free bridge design has been requested by County.
- 7. County must obtain State's written concurrence for any changes to the Part 100's, General Conditions, of the Standard Specifications for Construction before being added to the construction contract.

### **Professional, Technical and Expert Services Contracts**

- 1. County shall conduct consultant selection processes to obtain Architectural and Engineering (A&E) and Non-A&E personal services consultants in accordance with all applicable state and federal laws, regulations and policies in the solicitation and award process of any Supplemental Project Agreements containing federal funds. County shall follow County's documented processes for consultant selection, which have been reviewed and approved by State and FHWA.
- 2. Upon written request, State may make Region's consultant services contracts available for preliminary engineering and/or construction engineering services for County's federal-aid projects. If County chooses to use said services, County agrees to manage the work done by the consultant and make funds available to State for payment of those services.
- 3. County or others may perform preliminary and construction engineering. County or others may perform preliminary and construction engineering. In the event that County elects not to use County's certified consultant selection process to engage the services of a professional, technical and expert services consultant to perform any work covered by this Agreement, County may request State's two-tiered consultant selection processes, as allowed by OAR 137-048-0260, or work with another certified local agency to solicit consultants to perform architectural, engineering, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of this process is required to ensure federal reimbursement. State, or another certified agency that County chooses to obtain consultant services through, will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, 279C.110, 279C.125, Oregon Administrative Rule 137-048-0130 OAR 137-048-0220(4) and State Personal Services Contracting Procedures as approved by the FHWA. If County obtains consultant services from another certified agency, that certified agency will follow the processes approved by State for obtaining consultant services. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by County or contractors, including any consultant, prior to receiving written authorization to

proceed from State or certified agency County engages to perform services. Any amendments to such contract(s) also require State's approval or the approval of certified agency County engages to perform services.

### **Preliminary Engineering**

1. State shall, at project expense, review, process and approve or submit for approval to the federal regulators all environmental statements. State shall, if State prepares these documents, offer County the opportunity to review and approve the documents prior to advertising for bids.
2. County or its consultant shall, as a federal-aid participating preliminary engineering function a) conduct the necessary field surveys, b) conduct environmental studies, c) conduct traffic investigations, d) conduct foundation explorations, and hydraulic studies, e) assist State with acquisition of necessary right of way and/or easements, and f) perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates, g) conduct all public involvement processes and h) identify and obtain all required permits necessary for the construction of the project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction. All design exceptions from AASHTO design standards shall be reviewed by State for concurrence prior to advertisement of final plans and specifications.
3. Bridge design will be by qualified consultants, contracted by State or by County if certified for consultant selection, with County oversight. If the County desires to design bridges, then State first must monitor a test project with the bridge design component. Full certified status for bridge design is conditioned upon County's successful completion of test project and written approval from State.

### **Right of way**

1. County and its consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, the *ODOT Right of Way Manual*, Title 23 CFR Part 710 and Title 49 Part 24. State, at project expense, shall review all right of way activities engaged in by County to ensure compliance with all laws and regulations.
2. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. County may perform acquisition of the necessary right of way and easements for construction and maintenance of projects provided County or its consultant are qualified to do such

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work, as required by the *ODOT Right of Way Manual*, and County has obtained prior approval from State's Region Right of Way office to do such work.

3. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each Party. On any project that has the potential of needing additional right of way, to ensure compliance in the event that additional right of way is unexpectedly needed, a right of way services agreement will be required. State at project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at project expense, shall be responsible for coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through State's Regional Local Agency Liaison, who will forward the request to State's Region Right of Way office on all projects. County must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the project). County shall contact State's Regional Local Agency Liaison, who will contact State's Region Right of Way office for additional information or clarification on behalf of County.
4. County agrees that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
5. County ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.

## **Title VI**

1. County agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, Title 49 CFR Part 21, and Executive Order 11246, relative to the employment practices under any engineering contract awarded in conjunction with this Agreement. If County fails to comply with any federal or state civil rights requirements identified in this Agreement, sanctions may be imposed by FHWA or State as appropriate, including, but not limited to:
  - a) Withholding of payments to County under this Agreement until County causes compliance, or

- b) Cancellation, termination, or suspension of this Agreement, in whole or in part.
- 2. County shall consider Title VI issues from the beginning of project development, through the entire project process, including project closure. County understands and agrees to comply with the Title VI requirements listed in the *Local Agency Guidelines Manual*, Section A Title VI, attached hereto by reference and made a part of this Agreement. In order to meet the requirements of the Title VI of the Civil Rights Act of 1964, County shall develop one of the following items, which must be approved by State's Office of Civil Rights.
  - a) A Title VI Program Plan (applicable to counties over 200,000 in population); or
  - b) A Title VI Program Plan or a Nondiscrimination Agreement (applicable to counties under 200,000 in population.)
- 3. Complaint Procedures: County shall comply with Title VI by deferring all Civil Rights discrimination complaints to the State's Office of Civil Rights and County must include the following language in any of its contracts under the certification program:

*"Any person who believes that he/she has been excluded from participation in, denied benefits or services of any program or activity administered by the Department or its subrecipients, consultants, and contractors on the basis of age, disability, race, color, national origin, sex or income status may bring forth a complaint of discrimination under Title VI and related statutes to the Oregon Department of Transportation, Office of Civil Rights, 355 Capitol Street NE, Room 504, Salem, Oregon, 97301, (503)986-3169."*

### **Construction – Bid, Award and Contract Administration**

#### **Civil Rights**

#### **Disadvantaged Business Enterprise (DBE), Equal Employment Opportunity Program (EEO), and On-the-Job Training (OJT) /APPRENTICESHIP**

- 1. County, its contractors and subcontractors shall comply with the "United States Department of Transportation (USDOT) Approved Disadvantaged Business Enterprise (DBE) Commitment Requirements" and the "USDOT Approved Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions," incorporated hereto by reference and made a part of this Agreement. County shall send electronic copies of all completed Committed DBE Breakdown and Certification forms described in the "USDOT Approved DBE Commitment Requirements" to State's Small Business and DBE Program Manager, with a copy to State's Regional Local Agency Liaison, for review and approval. County shall not

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award any contracts under this Agreement prior to receiving written approval of said forms from the State's Small Business and DBE Program Manager. County agrees to ensure that the above provisions (including references therein) shall be incorporated into all contracts and subcontracts (regardless of tier) describing the work to be performed by DBEs on projects financed in whole or in part with federal funds. Failure by County to carry out these requirements on any project is a material breach of contract, which may result in the termination of the contract or such other remedy as State deems appropriate. Federal regulations Title 49 CFR Part 26, as approved by USDOT, are also incorporated by reference and shall be made a part of any contract specifications and this Agreement.

2. County, its contractors and subcontractors, shall not discriminate on the basis of race, color, national origin, or sex in the award, administration, and performance of any federal-aid contract in the administration of DBE requirements under Title 49 CFR Part 26.
3. County, its contractors and subcontractors shall comply with the EEO and the OJT/APPRENTICESHIP requirements, as referenced in the *Local Agency Guidelines Manual*, incorporated herein by reference and made a part of this Agreement. County agrees to ensure that the EEO and OJT/APPRENTICESHIP requirements listed in the *Local Agency Guidelines Manual* shall be a part of all solicitations for bids on all federal-aid construction contracts or subcontracts of \$10,000 or more. Section 140 of Title 23, USC, Equal Employment Opportunity, as in effect on May 1, 1982, is incorporated hereto by reference and shall be made a part of any contract specifications and this Agreement. The OJT/APPRENTICESHIP requirements shall also be part of all solicitations for bids on all federal-aid construction contracts or subcontracts when OJT/APPRENTICESHIP is assigned and is in implementation of Title 23 USC 140(a). Federal regulations Title 23 CFR Part 230, as approved by USDOT, are also incorporated hereto by reference and shall be made a part of any contract specifications and this Agreement.
4. County its contractors and subcontractors shall not discriminate on the basis of age, disability, race, color, national origin, sex, income status or religion in the award, administration, and performance of any federal-aid contract in the administration of EEO and OJT/APPRENTICESHIP requirements under Title 23 CFR Part 230.
5. County shall include in all construction bid books, relative to receiving federal-aid, the following paragraph.

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR Part 26 in the award and administration*

*of federal-aid 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 County deems appropriate."*

6. State shall make available to County, by electronic medium, all current and pertinent DBE, EEO and OJT/APPRENTICESHIP forms. County will include the forms in County's bid books, as defined in the County's manual and procedures as appropriate. State's Office of Civil Rights will be available to provide EEO, OJT/APPRENTICESHIP and DBE training during the test projects.
7. State shall review and determine goals or requirements DBE, and OJT/APPRENTICESHIP for each project as appropriate. To initiate this review, County shall submit to State's Regional Local Agency Liaison, approximately thirteen (13) weeks before bid opening, the plans, specifications ninety (90) percent complete), engineer's estimate, cost and completion data as well as the DBE/OJT/APPRENTICESHIP Civil Rights Sheet also known as (aka) "yellow sheet" by electronic means, fax, or hard copy to the State's Small Business/DBE Program Manager in the Office of Civil Rights. If County disagrees with State's assigned goals or requirements for DBE and OJT/APPRENTICESHIP, County and State shall discuss, however, State will have final determination.
8. County understands that the DBE provisions and bid document inserts are required even if the DBE goal is set to zero (0). Federal regulations encourage contractors to involve DBE firms even if the DBE goal is zero (0). All prime bidders shall submit the Subcontractor Solicitation and Utilization Report (SSUR) (ODOT form 734-2721) to the County within ten (10) days of bid opening. County shall forward the SSUR by electronic means or fax, to the State's Small Business/DBE Program Manager in the Office of Civil Rights regardless of whether the DBE goal is zero or not.
9. County shall fax or send a list of the prime bidders with bid amounts for all bidders to the State's Small Business/DBE Program Manager in the State's Office of Civil Rights. In addition, County shall forward appropriate civil rights forms and information within twenty-four (24) hours of bid opening. After award, and prior to contract execution, County shall forward copies of all forms received by County from contractor(s) to State's Regional Local Agency Liaison within ten (10) days. After the contract is executed, County shall forward all forms received from contractor(s) to State's Regional Local Agency Liaison with ten (10) days.
10. County shall comply with the goals or requirements for DBE, and OJT/APPRENTICESHIP established by State for each federal-aid project.
11. State shall provide support, compliance monitoring, and on-site reviews (as required) for the DBE, EEO, and OJT/APPRENTICESHIP programs. State shall

deliver to the County the Standard Precon package for each project. State shall act on behalf of County regarding all civil rights contract administration activities and shall report any discrepancies or issues to County, not the contractor. County maintains responsibility to uphold the programs with the contractor.

12. If County's lowest bidder has not met the DBE goal on a project, State's Office of Civil Rights shall determine if good-faith efforts were made and make a recommendation to County regarding award as it applies to meeting the DBE goal assigned for that particular project. If State's Office of Civil Rights determines that County's apparent low bidder has not made good faith efforts, State's Office of Civil Rights will provide a paragraph to be included in a letter to the contractor from County that the bidder is non-responsive. The paragraph will include the reason for the determination that the bid is non-responsive and provide the bidder an opportunity for administrative reconsideration. County shall use the information provided by the State's Office of Civil Rights verbatim and make no changes to the wordage when submitting to the contractor. If the bidder requests administrative reconsideration, County shall notify State's Office of Civil Rights and State's Office of Civil Rights shall conduct the administrative reconsideration. State's Office of Civil Rights shall provide the results of the administrative reconsideration to County. County shall use the information provided by the State's Office of Civil Rights verbatim and make no changes to the wordage when submitting to the contractor. County shall defend the administrative reconsideration committee decision with State and Department of Justice providing assistance.
13. If a protest is filed involving a DBE goal, State's Office of Civil Rights shall provide a written response to the protest and forward to County for finalizing and signature. County shall use verbatim the wordage provided by State's Office of Civil Rights in connection with the DBE goal issue. If County disagrees with the response, County may discuss with State's Office of Civil Rights, however State's Office of Civil Rights has the final determination.

### **Construction Activities and Administration**

1. County understands and agrees that certification is only for the low bid contracting process. If County wishes to use an alternate method of bidding other than low bid, County shall contact the State's Regional Local Agency Liaison to obtain State's and/or FHWA written approval.
2. County may use Additive Alternate Bidding (aka Bid Alternates). County's first Additive Alternate Bidding project using the Certification Program will be considered a test project and County will need to inform State's Regional Local Agency Liaison in writing at ninety (90) percent PS&E.



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3. County agrees that contract administration, quality control, quality assurance, material sampling and testing will be accomplished in accordance with County's current standards for federal-aid projects or County may use State's current Construction Manual. Said manuals are incorporated hereto by reference, and made a part of this Agreement.
4. After receipt of ninety (90) percent PS&E, State shall determine whether state Bureau of Labor & Industries (BOLI) wage rates apply or if BOLI and federal Davis-Bacon wage rates must be compared and the higher of the two (2) rates paid per classification and inform County within ten (10) working days. County shall monitor labor compliance and prevailing wage rate compliance.
5. County shall include in the bid book the requirement of a bid guaranty in an amount not to exceed ten (10) percent of the bid amount; a performance bond in an amount equal to the full contract price; and a payment bond in the amount equal to the full contract price. Each bid guaranty, performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon.
6. If County awards a construction contract, County shall follow County's materials quality program. County shall process and pay all contractor progress estimates, make final contractor payment, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of each project.
7. State will reimburse County for construction contractor payments within ten (10) working days of receipt of payment request from County. Once State's Regional Local Agency Liaison has received invoice from County, State's Regional Local Agency Liaison shall forward the invoice to State's Financial Services Office for payment. Receipt of payment requests shall include the items listed in paragraph six (6) of Finance in this Agreement.
8. County shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts, and conduct all contract administration. Upon County's award of the construction contract, County, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract and making contractor payments.
9. County shall send State, within one (1) year following contract completion for construction, a final copy of "As Constructed" plans if a roadway project is on or affects the state highway system and for all bridge projects both on and off the state highway system where the State has responsibility for inspection of such bridges.

### **Contract Claims and Contractor Change Orders**

1. County shall follow County's procedures for contractor claims and Contract Change Orders as described in County's current standards for federal-aid projects. County's contract specifications are required to include a process for dispute and claim resolution. Those specifications must require a claims review by State of any unresolved claims prior to the contractor being allowed to pursue litigation. State will conduct claims reviews and will make independent determinations on contractor's entitlement and award of damages.
2. County cannot exceed any project authorization without following State's process, and obtaining approval for an increase in project authorization.
3. FHWA retains approval authority over waiver for Buy America provisions. State retains approval authority over the following Contract Change Orders including:
  - a) Changes which affect environmental mitigation classification or commitments;
  - b) Right of way access control on or impacting State's facilities;
  - c) Changes in the scope of work or extension of the contract limits shown in the project documents approved by State and FHWA;
  - d) Any contract change altering the DBE goals or requirements;
  - e) Any impact or changes to traffic mobility including width, height, weight, length, access to the route or additional travel delay on or impacting State's facilities; and
  - f) Any change(s) resulting in less than AASHTO Design Standards for projects on the NHS.

### **Railroads**

County shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the appropriate State Regional Local Agency Liaison, who will contact State's Railroad Liaison on behalf of County. Only those costs allowable under Title 23 CFR Part 140 Subpart I, and Title 23 Part 646 Subpart B shall be included in the total project costs; all other costs associated with railroad work will be at the sole expense of County, or others. County may request State, in writing and at project expense, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

### **Utilities**

County shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms

are available through the State Utility Liaison or the State's Regional Local Agency Liaison. County shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 Code of Federal Regulations (CFR) Part 645 Subpart A and B, shall be included in the total project costs; all other utility relocations shall be at the sole expense of County, or others. County may send a written request to State, at project expense, to arrange for utility relocations/adjustments lying within County jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties. (County shall not perform any utility work on state highway right of way without first receiving written authorization from State).

### **Maintenance Responsibilities**

1. County shall, upon completion of each project, maintain, operate and provide power as needed to operate the projects at its own cost and expense for the useful life of each project. The useful life of each project shall be identified as eight (8) years for pavement overlay projects and twenty years (20) for all other projects, unless otherwise indicated in the individual Supplemental Project Agreements. In the event a project will include or affect a state highway, this provision does not address maintenance of that state highway.

### **Projects on or Impacting State Highway**

1. County shall contact the appropriate State District Office prior to commencement of work to determine if any permits are needed to occupy State right of way. County agrees to comply with all provisions of any State issued permits to occupy or perform operations upon a state highway and to also obtain road approach permits from the State District Office if they are needed, according to OAR 734, Division 51. County agrees to comply with all provisions of required permits, and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such provisions.
2. Pursuant to OAR 734-020-0430, County shall obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal to be installed on a state highway.
3. County and State shall enter into a separate traffic signal agreement to cover obligations for any traffic signal being installed on a state highway.
4. County, or its contractor's, electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations

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on state highways. The State District Permitting Office shall verify compliance with this requirement prior to construction. The permit fee should also cover the State electrician's supplemental inspection.

5. State shall, at project expense, perform the signal equipment environmental testing. State Signal Technicians shall, at project expense, perform the signal field testing, and turn-on.
6. Traffic signal timing shall be the responsibility of State, unless there is an agreement that specifically allows County to perform that function. State shall retain the right of review of the traffic signal timing for signals on state highways, or those which State maintains, and shall reserve the right to request adjustments when needed. In cases where the County modifies 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 modifications shall be reported to State's Region Traffic Engineer. State's Region Traffic Engineer will notify County whenever timing changes that affect the operation of local street connections to the state highway are scheduled. 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.
7. County shall, upon completion of individual projects and at its own expense, maintain the pavement surrounding the vehicle detector loops installed in the County roads and streets in such a manner as to provide adequate protection for said detector loops. Failure to do so may result in State requiring County to repair or replace the damaged loops at County expense. Future County roadwork activities involving the detector loops may also result in the same State requirements. County shall also adequately maintain the pavement markings and signing installed in accordance with the approved signal plan sheets for the signal installation or current Manual on Uniform Traffic Control Devices standards.
8. State shall, upon completion of individual projects and at its own expense, maintain the pavement surrounding the vehicle detector loops installed in the state highway in such a manner as to provide adequate protection for said detector loops. State shall also adequately maintain the pavement markings and signing installed on the state highway in accordance with current State standards.
9. County shall include the following stipulations in the Special Provisions for construction contract work for any project where County is contracting work on a state highway:
  - a) Contractor shall name State as a third party beneficiary of the resulting contract.

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- b) Contractor shall indemnify, defend and hold harmless County, State and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of contractor or its officers, employees, sub-contractors, or agents under this contract.
- c) Commercial General Liability. Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State and County. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$2,000,000.
- d) Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.
- e) Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the contract shall include State and County and its divisions, officers and employees as Additional Insured but only with respect to the contractor's activities to be performed under this contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- f) Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the contractor or its insurer(s) to State and County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of contract and shall be grounds for immediate termination of this contract.
- g) County shall require its contractor(s) and/or subcontractor(s), as appropriate, to acquire construction and performance bonding covering State's interests where project construction affects State property. State will be covered individually under the bonding arrangement, not as a party in a dual obligation bond. Proof of said bonding will be provided to State by the acquiring party. If County fails to

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meet the requirements of this paragraph or the underlying agreement conditions, including all incorporated state and federal laws, rules and regulations and costs are incurred by State because of it, State may withhold the County's proportional share of Highway Trust Fund distribution necessary to reimburse State for those costs.

10. Traffic signal poles and foundations installed on state highways shall conform to ODOT standards, as per Technical Bulletins TR06-01(B) and TR07-03(B).
11. County shall be responsible for any behind the curb improvements including areas located within highway right of way. Such improvements shall be maintained at the same level as are similar facilities owned by State. County may require the adjacent property owners to fund or perform maintenance of the behind the curb improvements. County shall remain responsible for compliance with the terms of this Agreement, and for the performance of such work, even when maintenance is performed by County contractors or property owners, or if right of way behind the curb is partly or entirely on state highway right of way.
12. County shall maintain the landscaping and irrigation to be installed for all improvements behind the curbs or roadway. Maintenance along and on the state highway shall include replacement of dead or dying plants and trees, removal of litter, removal of weeds or weed control and tree trimming to maintain a seventeen (17) foot clear zone in the travel lane, leaf removal and irrigation for healthy sustainability of said landscaping.
13. County shall be responsible for one hundred (100) percent of water and power costs associated with the landscape and irrigation installed as part of improvements behind the curbs or roadway. County shall ensure that the water and power companies send water and power bills directly to County.
14. State grants the County or others designated by the County and permitted by State District Permitting Office, permission to access State right of way for the purpose of maintaining project related landscaping and sidewalks. In lieu of State district permits, State hereby grants County or others designated by County the right to enter and occupy State right of way for the purpose of routine maintenance of all project related landscaping and sidewalk improvements. County shall contact State's Regional Local Agency Liaison to determine if a permit is required from State's District Office for all other activities beyond the listed routine maintenance prior to commencing activities.
15. County grants State or others designated by State the right to enter onto and occupy County right of way for the purpose of inspection, audit, maintenance and operation

of State-owned and other designated facilities, and performance of any other State duty or obligations.

16. County shall be responsible for the cost of decorative embellishment on any signal or separate illumination poles and shall be responsible for any decorative embellishment maintenance on such poles upon completion of County projects. Any decorative lighting shall be the responsibility of the County for both power costs and maintenance. Such illumination shall be served by a separate system from the signal system. Any such additional illumination on the state highway must be reviewed by the office of the State Traffic Engineer. State District Office shall coordinate all such reviews. Decorative poles and foundations installed on state highways must conform to ODOT standards, as pursuant to Technical Bulletin TR07-06(B).
17. State may conduct periodic inspections during the life of County certification projects to verify that projects are being properly maintained and continue to serve the purpose for which federal funds were provided.
18. State shall, at its own expense, maintain and operate the portions of the individual projects on state highway right of way.

### **General Provisions**

1. County agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
2. County agrees and understands that it will conduct all contracting in compliance with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS Chapters 279A, 279B, and 279C, the provisions of ORS 279C.505, 279C.515, 279C.520, 279.530, and 279B.270, Title 2 CFR 225; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; and OMB CIRCULAR NO. A-133; Title 23, United States Code (USC), Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, provisions of FAPG, *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*, *Local Contract Review Board Contracting Rules*, and State Attorney General's Model Rules pursuant to 279A.060 and 279A.065(5).
3. County acknowledges and agrees that State, the Oregon Secretary of State's Office, USDOT Office of Inspector General, FHWA, any other federal government agency, and their duly authorized representatives shall have access to such fiscal records

and other books, project documents, papers, plans and writings of County pertaining to work covered by the Supplemental Project Agreements to perform examinations and audits and make excerpts and transcripts. County is responsible for using its procedures, as approved by State, for project documentation and long term retention of project documentation. In all contracts, the County shall expressly require that the contractor and subcontractor(s) maintain the records and keep the records accessible and available at reasonable times and places for a minimum period of six (6) years from the date of final payment under the contract or subcontract or until the conclusion of any audit, controversy or litigation arising out of or related to the contract, whichever date is later, unless a different period is required by law. See the Secretary of State's Retention Schedule; e.g. OAR Chapter 166, Division 150 for counties and Division 300 for state agencies. This shall include, but is not limited to:

- a) daily work records;
  - b) quantity documentation;
  - c) material invoices and quality documentation;
  - d) certificate of materials origin;
  - e) process control records;
  - f) project diary;
  - g) erosion control reports;
  - h) temporary protection and direction of traffic reports;
  - i) foreign steel summary;
  - j) test results; and
  - k) inspection records to ensure that projects are completed in conformance with approved plans and specifications.
4. County shall retain and keep all files and records for a minimum of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR Part 18 Subpart 42).

### **County Indemnifications**

1. County shall, to the extent permitted by State law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from County's failure to comply with the terms of this Agreement and Supplemental Project Agreements.
2. On all construction projects where County is doing the construction engineering and project management, County, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other



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lawsuit arising out of the contractor's work or County's supervision of individual projects.

3. County shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save and hold harmless the State of Oregon from any and all claims, suits, actions of whatsoever nature resulting from or arising out of activities of County, its officers, agents or employees under this Agreement and Supplemental Project Agreements. County's total liability shall not exceed the tort claims limits provided in Oregon Tort Claims Act, ORS 30.260 to 30.300, for 'local public bodies.'
4. County shall require its contractor(s) to indemnify the State of Oregon, Oregon Transportation Commission and its members, and Department of Transportation, its officers and employees, for performance of the obligations of contractor(s) under its contracts with County.
5. Notwithstanding the foregoing defense obligations under paragraphs listed under "Indemnifications" above, neither County or its contractor(s), nor any attorney engaged by County shall defend any claim in the name of State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that County is prohibited from defending the State of Oregon, or that County is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against County if the State of Oregon elects to assume its own defense.
6. County, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for County's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds on Supplemental Project Agreements, and shall, upon County's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under the Supplemental Project Agreements; or if legal limitations apply to the indemnification ability of County, 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 individual Supplemental Project Agreements.

### **State Indemnifications**

1. State shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save and hold harmless County from any and all claims, suits, actions of whatsoever nature resulting from or arising out of activities of State, its officers, agents or employees under this Agreement or Supplemental Project Agreements.
2. Notwithstanding the foregoing defense obligations under the paragraph above, neither State or its contractor(s), nor any attorney engaged by State shall defend any claim in the name of the County or any agency/department/division of County, nor purport to act as legal representative of County or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of County. County may, at any time at its election assume its own defense and settlement in the event that it determines that State is prohibited from defending County, or that State is not adequately defending County's interests, or that an important governmental principle is at issue or that it is in the best interests of County to do so. County reserves all rights to pursue any claims it may have against State if County elects to assume its own defense.

### **Insurance**

1. County shall require its construction contractor(s) to list the State of Oregon, Oregon Transportation Commission and its members, and Department of Transportation, its officers and employees, as additional insured in the insurance certificates required of contractor(s) under any contract. Prior to Notice to Proceed, contractor shall provide insurance certificates to County. For railroad insurance, the maximum dollar amounts of coverage to be reimbursed for federal funds with respect to bodily injury, death and property damage is limited to a combined amount of \$2,000,000 per occurrence with an aggregate of \$6,000,000 applying separately to each annual period. FHWA must approve any exceptions to the maximum railroad protective insurance limits. County should contact local railroad for insurance requirements. The required insurance coverage shall be in effect for the life of the contract.
2. County shall include State as a third party beneficiary in the specifications of County's construction contract on any projects, with express authority to enforce the terms and conditions of the contract.

### **Workers' Compensation Coverage**

All employers, including County 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. County shall ensure that each of its contractors complies with these requirements.

### **Termination**

1. This Agreement or Supplemental Project Agreements may be terminated by mutual written consent of both Parties.
2. State may terminate or rescind this Agreement or Supplemental Project Agreements if County fails to comply with the above-mentioned requirements, and after receipt of written notice from State, fails to correct such compliance within ten (10) days or such longer period as State may authorize.
3. State may terminate this Agreement or Supplemental Project Agreements effective upon delivery of written notice to County, or at such later date as may be established by State, under any of the following conditions:
  - a) 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 federal fund reimbursements to County as provided under the Certification Program.
  - b) If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Certification Program is prohibited or State is prohibited from reimbursing County with federal funds.
4. Any termination of this Agreement or Supplemental Project Agreements shall not prejudice any rights or obligations accrued to the Parties prior to termination.

### **Lobbying Restrictions** – pursuant to Form FHWA-1273, Required Contract Provisions

County certifies by signing the Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any 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.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of

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any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit, for each Supplemental Project Agreement, Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d) 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 Title 31 USC Section 1352.
- e) 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.

**Signature Authorities**

- 1. County agrees that it has the means to provide adequate expertise and has support staff available to perform the functions being subdelegated. The support staff may include consultants or state services. County shall ensure that any contracts entered into with consultants, contractors or subcontractors shall adhere to the same requirements as those required of County under this Agreement.
- 2. County's approval authorities for any work performed by County under conditional certification, and after final certification has been granted, shall be identified in a letter to be provided to State. The letter must be sent to Certification Program Manager upon execution of this Agreement. If any of the titles identified by County as having approval authority change, County shall immediately send a new letter to Certification Program Manager identifying all the Parties by title that have approval authority. State's Certification Program Manager will provide a copy of any updates to the State's Regional Local Agency Liaison. County agrees that the signatures on each project prospectus, Supplemental Project Agreement, contract, and all project development phases shall adhere to said approval authority.
- 3. County certifies and represents that the individuals signing this Agreement have been authorized to enter into and execute this Agreement on behalf of County,

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under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.

4. The provisions of this Agreement shall apply to all federal-aid Supplemental Project Agreements County enters into with State. If needed, and agreed to by both State and County, the provisions of this Agreement may be modified by use of special provisions in the Supplemental Project Agreements. In the event of a conflict, the Supplemental Project Agreement shall control over this Agreement.
5. 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.
6. This Agreement and the attached exhibits constitutes the entire agreement between the Parties on the subject matter hereof. Supplemental Project Agreements will incorporate this Agreement and the exhibit(s) for purposes of those specific projects. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations.

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On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates day-to-day authority to the Deputy Director for Highways to approve and sign agreements.

**MULTNOMAH COUNTY**, acting by and  
through its elected officials

By \_\_\_\_\_  
Jeff Cogen, County Chair

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By /s/ Matthew O. Ryan  
Assistant County Attorney  
for Multnomah County, Oregon  
Date 8/11/2010

**County Contact:**  
Brian Vincent, County Engineer  
Multnomah County  
1620 SE 190<sup>th</sup>  
Portland, OR 97233  
Telephone: (503) 988-5050 x29642  
Fax: (503) 988-3321  
[brian.s.vincent@co.multnomah.or.us](mailto:brian.s.vincent@co.multnomah.or.us)

**STATE OF OREGON**, acting by and  
through its Department of Transportation

By \_\_\_\_\_  
Deputy Director, Highways

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By: \_\_\_\_\_  
Local Government Section Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**State Contact:**  
Mark Foster  
ODOT  
123 NW Flanders Street  
Portland OR 97209-4012  
Telephone: 503-731-8288  
[mark.a.foster@odot.state.or.us](mailto:mark.a.foster@odot.state.or.us)

Multnomah County/ODOT  
Agreement No. 26226

STATE OF OREGON  
DEPARTMENT OF TRANSPORTATION

County is seeking certified status in the following functional areas as marked below:

- ☒ Consultant Selection
- ☒ Design
- ☒ Bridge Design
- ☒ Advertise, Bid and Award
- ☒ Construction Contract Administration

Multnomah County/ODOT  
Agreement No. 26226

**EXHIBIT A**

Agreement Number:

Project Name:

Key Number:

**ACKNOWLEDGMENT OF FEDERAL ASSISTANCE**

The property and assets under the jurisdiction of \_\_\_\_\_ were improved with assistance from the United States Government under an agreement executed between \_\_\_\_\_ and the Oregon Department of Transportation dated \_\_\_\_\_. Such assistance was provided to \_\_\_\_\_ in reimbursement of costs associated with \_\_\_\_\_ the \_\_\_\_\_.

The use and disposition of said property is subject to the terms of the above noted agreement, copies of which may be obtained from the Director, Oregon Department of Transportation, and is also subject to 49 CFR Part 18 which may be obtained from the Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, S.W., Washington D.C. 20590.

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

Title : \_\_\_\_\_

SUBSCRIBED and SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

**NOTARY PUBLIC FOR OREGON**

My commission expires: \_\_\_\_\_

*Forward the completed document to the following:*

**Oregon Department of Transportation**

**State Project Liaison**

Mark Foster

ODOT

123 NW Flanders Street

Portland OR 97209-4012