

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM AGREEMENT**

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 "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110 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 Title 23 United States Code (USC), the Federal Highway Administration (FHWA) is accountable for all programs under the Federal-Aid Highway Program; and State is responsible for project-level activities associated with Title 23 USC, Section 106. State, pursuant to the 2015 Oregon Department of Transportation Federal-Aid Highway Program Stewardship and Oversight Plan (Stewardship Plan), is responsible for all reviews and approvals associated with the design, construction, award, and final inspection of federal-aid projects off the National Highway System (NHS) excluding the exceptions noted in said Plan. State, pursuant to Title 23 Code of Federal Regulations (CFR) Part 1.11, Title 23 CFR Part 635.105, and the Stewardship Plan, may further delegate certain federal-aid project authorities to well-qualified and suitably equipped local public agencies (LPA's). State retains responsibility under federal law and regulations for all delegated activities.
3. 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 off the NHS. In a letter dated March 13, 2013, FHWA delegated authority to ODOT to allow certified LPA's to perform work on locally owned and maintained NHS facilities. ODOT retains responsibility to administer federal-aid projects on NHS and ODOT-owned NHS facilities. An LPA may perform work on an ODOT-owned NHS facility if both ODOT and the LPA agree and ODOT provides written approval authorizing such work. All other NHS work shall be performed exclusively by ODOT.
4. This Agreement shall supersede and replace Agreement No. 26226 in its entirety.

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:

AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act
AKA	Also Known As
BDDM	Bridge Design and Drafting Manual
BOLI	Oregon State Bureau of Labor and Industries
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FAPG	Federal-Aid Policy Guide
FHWA	Federal Highway Administration
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. Agency is currently pursuing certification in Direct Appointment consultant selection; Informal and Formal consultant selection; design, bridge design; advertising; bid and award; and construction contract administration. As a result, this Agreement grants authority to Agency, for those test projects identified under paragraph three (3) of this Section, to select consultants using the Direct Appointment, Informal and Formal consultant selection procurement processes; 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 Agency's federal-aid projects off the NHS, and projects that are on locally owned and maintained NHS facilities. Agency understands that ODOT retains responsibility to administer federal-aid projects on NHS and ODOT-owned NHS facilities. Agency may perform work on an ODOT-owned NHS facility if both ODOT and Agency agree and ODOT provides written approval authorizing such work. All other NHS work shall be performed exclusively by ODOT.
2. 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 Agency, 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. The language in this Agreement is written to cover all areas in which Agency could seek certification.

3. Agency understands and agrees that only Agency's Transportation Division of the County's Department of Community Services, has met the Certification criteria and that full Certification status is conditioned up Agency's successful completion of test projects and written approval from State. Agency also understands and agrees that while federal-aid projects may originate from one or more of Agency's other divisions or departments only Agency's Transportation Division and Agency's Certification Program Liaison shall provide quality control, oversight and have final approval authority for all such federal-aid projects and ensure that rules, regulations, and processes outlined in this Agreement are followed. Agency understands that Direct Appoint, Informal and Formal consultant selection; design; bridge design; advertising; bid and award; and construction contract administration for Agency's federal-aid projects shall be conducted only by Agency's Transportation Division, in accordance with this Agreement. An amendment to this Agreement shall be required to reflect the full certified status of these areas once Agency becomes certified in those areas.
4. Agency understands and agrees that it must successfully perform test projects, which may be select project phases, and until successful, Agency shall retain Conditional Certification 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 Agency and State to determine whether Agency should proceed to full Certification status or continue with another test project. Upon successful completion of the test projects and written approval by State, Agency shall be fully Certified to administer future federal-aid projects in accordance with this Agreement.
5. State retains its responsibility to FHWA for the administration of all federal-aid projects. If requested by Agency, or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to projects. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations.
6. State and Agency 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.
7. Agency understands and agrees that final approval for full Certification of each area it is seeking certification is conducted through State's Certification Program Manager in conjunction with State's Region Manager and may be rescinded at any time upon Agency's written request or if, in the opinions of 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.

8. State shall conduct random oversight reviews on Agency's Certification Program and projects through State's Certification Program Manager at least once every two (2) years after Agency has been awarded full Certification status. State may, at any time, initiate a formal audit using professional auditing standards of a federal-aid project.
9. 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. This Agreement may also be terminated upon Agency's or State's written request pursuant to the "Termination" Section of this Agreement.
10. This Agreement shall supersede and replace Agreement No. 26226, and its subsequent amendment, in their entirety. Supplemental Project Agreements under Agreement No. 26226 shall remain in full force and effect. It is agreed that all existing Supplemental Project Agreements entered into under the authority granted in Local Agency Certification Program Agreement No. 26226 shall continue under the authority of Agreement No. 29110, and shall be effectively amended with this Agreement to replace any references to Agreement No. 26226 with a reference to Agreement No. 29110. Invoices for construction, preliminary engineering and right of way work incurred prior to the replacement of Agreement No. 26226 can be invoiced by Agency and paid for by State under Agreement No. 29110 and the existing Supplemental Project Agreements.

Certified Agency Performing Work For Non-Certified Agency

1. Agency may perform work on behalf of a non-Certified agency in the areas in which Agency is Certified if Agency has obtained written approval from State. To obtain approval, Agency must submit a written request to State's Regional Local Agency Liaison with a copy to the State's Certification Program Manager. State's Regional Local Agency Liaison and State's Certification Program Manager will review the request and advise Agency in writing if the request is approved or denied.
2. If State approves Agency's request, the non-Certified agency and Agency must enter into a separate agreement which identifies the responsibilities between the two parties. Agency must submit a copy of the agreement to the State's Regional Local Agency Liaison and State's Certification Program Manager. The non-Certified agency must already have a signed federal-aid funding agreement with State on such a project. State and Agency will then enter into a Supplemental Project Agreement covering the non-Certified agency's project. Agency shall be responsible for the entire project, costs and non-participating costs. Long-term maintenance of a non-Certified agency project will be the responsibility of the non-Certified agency unless otherwise indicated in the Supplemental Project 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. Agency 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 Agency and State before any federal-aid project work begins. At least one (1) of Agency's approval authorities, as identified in the "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, Agency'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, Agency, 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, and e) Construction (Construction Advertising, Bid and Award, and Construction Contract Administration). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. Agency 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 Agency 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. Agency 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 six (6) 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. Agency 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. Agency 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 Agency a subrecipient of the federal funds it receives as reimbursement under the Supplemental Project Agreements. State will also determine and clearly state in the Supplemental Project Agreement if recipient is a subrecipient or vendor, using criteria in 2 CFR 200.330. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating costs, future allocations of federal funds, or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves Agency processes, procedures, or contract administration outside the *Local Agency Guidelines Manual* that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.

2. Agency agrees that costs incurred by State and Agency 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 shall simultaneously invoice FHWA and Agency for State's project costs, and Agency agrees to reimburse State for the federal-aid matching state share and any non-participating costs as determined in accordance with paragraph two (2), above upon receipt of invoice. Failure of Agency to make such payments to State may result in withholding of Agency's proportional allocation of State Highway Trust Funds until such costs are paid.
3. If Agency makes a written request for the cancellation of a federal-aid project, Agency shall bear one hundred (100) percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one 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 Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred.
4. Agency shall follow the requirements stated in the Single Audit Act. Agencies expending five hundred thousand (\$500,000) dollars or more in federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, shall have a single organization-wide audit conducted in accordance with the Single Audit Act of 1984, PL 98-502 as amended by PL 104-156 and subject to the requirements of 49 CFR Parts 18 and 19. Agencies expending seven hundred and fifty thousand (\$750,000) dollars or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014 shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Agencies expending less than five hundred thousand (\$500,000) dollars in federal funds in a fiscal year beginning prior to December 26, 2014, or less than seven hundred and fifty thousand (\$750,000) dollars in a fiscal year beginning on or after that date, is exempt from federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in General Provisions, Section 3 herein. The cost of this audit can be partially prorated to the federal program.
5. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of each project directly to State's Regional Local Agency Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and State's Supplemental Project Agreement. 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 Number 29110, 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 seven (7) of Construction Activities and Administration of this Agreement for the construction contractor invoice period.) All invoices received from Agency must be approved by State's Regional Local Agency Liaison prior to payment. Agency'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 forty-five (45) days from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction b) last payment for right of way acquisition and c) contract completion for construction. Partial billing (progress payment) shall be submitted to State within forty-five (45) days from date that costs are incurred. Invoices submitted after 45 days may not be eligible for reimbursement by FHWA.

6. Agency shall, upon State's written request for reimbursement, in accordance with Title 23, CFR Part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
 - a. Right of way acquisition is not undertaken 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. Agency 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. Agency 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.
7. Agency shall maintain all project documentation in keeping with State and FHWA standards and specifications for all individual projects. This shall include, but is not 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.

8. State shall submit all claims received from Agency for federal-aid participation to FHWA and compile accurate cost accounting records. State shall pay Agency all reimbursable costs on each project. State may request from Agency 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, Agency shall furnish State with an itemized statement of final costs. Agency shall pay one hundred (100) percent of the final total actual project costs. The actual cost of services provided by State will be charged to the individual projects and will be included in the total cost of the projects. An estimate of State's costs will be provided to Agency prior to the start of each project phase on individual projects. Such phases generally consist of Preliminary Engineering, Right-of-Way, Utility, and Construction.
9. Agency agrees to refund to State all federal funds paid to Agency, if FHWA requests such funds from State, because Agency has not followed a process, rule or procedure outlined in Agency's procedures, this Agreement or Supplemental Project Agreements. Refund from Agency shall be within thirty (30) days upon State's written notification. If Agency does not repay State within thirty (30) days, State shall withhold Agency's proportionate share of State Highway Trust Fund distribution until repayment has been made in full.
10. Agency 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, a Memorandum of Agreement and Acknowledgment of Federal Assistance. The Memorandum of Agreement and Acknowledgment of Federal Assistance is marked as Exhibit A, attached hereto and by this reference made a part of this Agreement. In such circumstances, the individual Supplemental Project Agreement will include this Exhibit.

Standards

1. In accordance with Agency's standard contract specifications and design standards manual, Agency shall include in the title sheet of the plans the following: federal-aid project number, location sketch, title of project, project limits, and a provision for approving official(s) signature(s) and date(s) and scale(s). A plan sheet index and list of applicable Oregon Standard Drawings and supplemental Agency plans will be included on the first sheet following the title sheet. Agency 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 Agency and approved by State, which are incorporated hereto by reference, and made a part of this Agreement:
 - a. Agency's *Public Improvement Design Standards Manual*;
 - b. County's Standard Construction Specifications;
 - c. All AASHTO policies and guidelines;
 - d. *Oregon Standard Specifications for Construction (Oregon Department of Transportation and APWA Oregon Chapter)* and Agency's Amendments as approved by State, unless otherwise approved in writing by State's Certification Program Manager;
 - e. *Manual on Uniform Traffic Control Devices (MUTCD)* and Oregon Supplements;
 - f. Oregon Temporary Traffic Control Handbook and National Association of City

Transportation Officials Bikeway Design Guide; (In the event of a conflict, the MUTCD and Oregon Supplements shall take precedence. These guidelines shall not be used on any project that is on or impacts a state highway.)

- g. *Transportation Research Board's Highway Capacity Manual*;
 - h. Local Agency Certification Procedures found in the *Local Agency Guidelines Manual*;
 - i. Title 23 and Title 49 USC and Title 23 and Title 49 Code of Federal Regulations (CFR);
 - j. *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*;
 - k. *ODOT Right of Way Manual*;
 - l. *ODOT's Bicycle & Pedestrian Design Guide (current version)*; and
 - m. *ODOT Bridge Section Load Rating Procedures. Use Tier 2 (LRFR) for bridges designed using Load Resistance Factor Design.*
2. Agency and State agree to the following notification process for Agency changes to Agency Standard Construction Specifications.
- a. State shall inform Agency of changes to the Oregon Standard Specifications through its regular written notification process. Agency shall ensure that any changes State makes to the Oregon Standard Specifications are integrated and implemented in Agency's approved specifications or relevant documents as required by state and federal regulations.
 - b. Agency shall submit to State for review any changes to the most current version of the Agency's General Conditions and Technical Specifications for federal-aid projects prior to implementation of proposed changes. Agency shall use track changes or similar tracking function to show said changes to the Part 100's General Conditions.
 - c. Modifications to technical specifications are made with each individual project and are shown in the proposed special provisions. These can be reviewed in conjunction with the Agency's Standard Construction Specifications and other construction documents. In the future, when the Agency's Standard Construction Specifications book is updated, the Agency will use "document compare" or a similar function to show all changes between the current approved version and the proposed version.
 - d. If State takes exception to any proposed changes, State will provide Agency with written response prior to the affected project advertisement date or a reasonable amount of time.
3. Agency agrees that if one of the individual projects is on the Oregon State Highway System or State owned facility, that design standards shall be in compliance with standards specified in the current ODOT Highway Design Manual and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current *Oregon Standard Specifications for Highway Construction* and current *Contract Plans Development Guide*.

4. Agency agrees that for all projects on the Oregon State Highway System or State owned facility any design element that does not meet *ODOT Highway Design Manual* design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.
5. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the *Manual on Uniform Traffic Control Devices and Oregon Supplement* as adopted in OAR 734-020-0005 for any individual project. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a State Highway pursuant to OAR 734-020-0430.
6. 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.
7.
 - a. Agency shall obtain approval from State's Certification Program Manager prior to commencing any in-house bridge design.
 - b. Agency must provide written notification to State's Bridge Inventory Coordinator when a bridge project is complete so the initial inspection can be scheduled.
8. Agency must submit the following information electronically for any bridge project to State's Senior Local Bridge Standards Engineer:
 - a. As-Built Drawings (signed, final copy containing final construction notes).
 - b. A copy of the foundation report.
 - c. Pile Records and/or drill logs. (If applicable).
 - d. Hydraulic Reports. (scour analysis report included in this report)
 - e. Stamped Load Rating calculation book with a CD containing all electronic files. (Agency shall notify the State's Senior Local Bridge Standards Engineer if there is a contract in place to load rate the bridge. If there is not a contract in place, Agency shall hire a consultant to obtain the load rating. Agency shall provide a stamped report with a CD containing all electronic files to the State's Senior Local Bridge Standards Engineer when it is complete.)

Professional, Technical and Expert Services Contracts

1. Agency shall select Architectural and Engineering (A&E) and Non-A&E personal services consultant using the Direct Appointment, Informal and Formal consultant selection procurement process approved by State. Agency shall follow applicable laws and invoicing requirements prescribed by State for this process as described in the *Consultant Selection – Direct Appoint Guidance* document; and the *Informal and Formal Consultant*

Selection Guidance document and the Local Agency Guidelines and as further described under Certification, paragraph 1 of this Agreement.

2. Upon written request, State may make Region's consultant services contracts available for preliminary engineering and/or construction engineering services for Agency's federal-aid projects. If Agency chooses to use said services, Agency agrees to manage the work done by the consultant and make funds available to State for payment of those services.
3. Agency or others may perform preliminary and construction engineering. In the event that Agency elects not to use the Certified consultant selection process as described in paragraph 1 of this Section to engage the services of a professional, technical and expert services consultant to perform any work covered by this Agreement, Agency may request State's two-tiered consultant selection process, as allowed by OAR 137-048-0260, or work with another Certified local agency to solicit consultants to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of any one of these processes is required to ensure federal reimbursement. State, or another Certified agency through which the Agency chooses to obtain consultant services, will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR 1201, 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 Agency seeks to obtain consultant services from another Certified agency, that Certified agency must have entered into a master certification agreement with ODOT to perform the same consultant services Agency is seeking to use; or 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 Agency or contractors, including any consultant, prior to receiving written authorization to proceed from State or Certified agency that Agency engages to perform services. Any amendments to such contract(s) also require State's approval or the approval of Certified agency that Agency engages to perform services.
4. Agency shall follow the procedures set out in the *Local Agency Guidelines Manual* to request DBE contract goals, and ensure the appropriate DBE provisions and goals for A&E and related services are incorporated in the solicitation documents prior to Agency advertising a request for proposals. State's Office of Civil Rights will review and determine goals for each contract as appropriate. Agency shall submit additional civil rights forms and reports as required in the *Local Agency Guidelines Manual*.

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 Agency the opportunity to review and approve the documents prior to advertising for bids.

2. Agency 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) either acquire or assist State with acquisition of necessary right of way and/or easements in accordance with the Right of Way section of this Agreement, 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 for by State or by Agency if Certified for consultant selection, with Agency oversight. If Agency desires to design bridges, then State first must monitor 2-4 test projects with the bridge design component. Full Certification status for bridge design is conditioned upon Agency's successful completion of test projects and written approval from State. Bridge design certification certifies Agency for the design of regular types of bridges which do not fit into the "major or unusual" category as defined in ODOT's Bridge Design and Drafting Manual. FHWA policy requires ODOT's Bridge Section to approve Agency's proposal of "major or unusual" type of bridge design before proceeding to design.

Right of way

1. Agency 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 and the ODOT Right of Way Manual, Title 23 CFR part 710 and Title 49 CFR part 24. State, at project expense, shall review all right of way activities engaged in by Agency 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. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of projects provided Agency or its consultant are qualified to do such work, as required by the ODOT Right of Way Manual, and Agency 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 right of way, to ensure compliance in the event that 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. Agency 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 a project). Agency 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 Agency.

4. Agency 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. Agency ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.

Title VI

1. Agency 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 contract awarded in conjunction with this Agreement. If Agency 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 Agency under this Agreement until Agency causes compliance, or
 - b. Cancellation, termination, or suspension of this Agreement, in whole or in part.
2. Agency shall consider Title VI issues from the beginning of project development, through the entire project process, including project closure. Agency understands and agrees to comply with the Title VI requirements listed in the Local Agency Guidelines Manual, 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, Agency 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 local governments serving populations over 200,000 in population); or
 - b. A Title VI Program Plan or a Nondiscrimination Agreement (applicable to local governments serving populations under 200,000 in population).
3. Complaint Procedures: Agency shall comply with Title VI by deferring all Civil Rights discrimination complaints to State's Office of Civil Rights and Agency 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, 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. Agency shall follow the procedures set out in the Local Agency Guidelines Manual to request Civil Rights contract goals and ensure the appropriate civil rights program provisions and goals for construction contracts are incorporated in the solicitation documents prior to Agency advertising for construction bids. State's Office of Civil Rights will review and determine civil rights goals and provisions for each contract as appropriate. Agency shall submit additional civil rights forms and reports as required in the Local Agency Guidelines Manual.
2. Agency agrees to adopt the ODOT DBE Program Plan, available at: http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe_program.aspx#plan. Agency, its contractors and subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
3. Agency, its contractors and subcontractors shall comply with the Disadvantaged Business Enterprise (DBE) Program requirements, as referenced in the Local Agency Guidelines Manual, incorporated hereto by reference and made a part of this Agreement. Agency agrees to ensure that the DISADVANTAGED BUSINESS ENTERPRISE (DBE) COMMITMENT REQUIREMENTS and the DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUPPLEMENTAL REQUIRED CONTRACT PROVISIONS, listed in the Local Agency Guidelines Manual, shall be a part of all solicitations for bids on all federal-aid construction contracts. Agency 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 Agency 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.

4. Agency, its contractors and subcontractors shall comply with the EEO and the OJT/APPRENTICESHIP requirements, as referenced in the Local Agency Guidelines Manual, incorporated hereto by reference and made a part of this Agreement. Agency 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 ten thousand dollars (\$10,000) or more. Title 23, USC, Section 140, 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 Section 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.
5. Agency, 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.
6. Agency 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 Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).”
7. State shall make available to Agency, by electronic medium, all current and pertinent DBE, EEO and OJT/APPRENTICESHIP forms. Agency will include the forms in Agency's bid books, as defined in Agency'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.
8. State shall review and determine goals or requirements for DBE and OJT/APPRENTICESHIP for each project as appropriate. To initiate this review, Agency 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. State's Regional Local Agency Liaison shall submit the documents to State's Office of Civil Rights. If Agency disagrees with State's assigned goals or requirements for DBE and OJT/APPRENTICESHIP, Agency and State shall discuss, however, State will have final determination.

9. Agency 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). Agency shall request all prime bidders to submit the Subcontractor Solicitation and Utilization Report (SSUR) (State form 734-2721) to the Agency within ten (10) days of bid opening. Agency shall forward the SSURs by electronic means to State's Office of Civil Rights regardless of whether the DBE goal is greater than zero (0).
10. As set out in the Local Agency Guidelines Manual, Agency shall send to State's Office of Civil Rights a list of the prime bidders with bid amounts for all bidders and, if required by the DBE COMMITMENT REQUIREMENTS, also send each bidder's completed "DBE Commitment Certification and Utilization Form" (State form 734-2785) and any good faith efforts-related information within two (2) working days of bid opening. If the DBE goal is greater than zero (0), State's Small Business Program Manager will evaluate the bids for DBE compliance and notify the Agency of the results. Agency shall not notify bidders of contract award until they have received the evaluation from State. If the DBE goal is greater than zero (0), Agency shall require in its notice of award that the responsive low bidder submit a Committed DBE Breakdown and Certification Form (State form 734-2531) for each DBE firm committed at time of bid to meet the goal. After award, and prior to contract execution, Agency shall send electronic copies of all completed Committed DBE Breakdown and Certification forms as required by the DBE COMMITMENT REQUIREMENTS to State's Office of Civil Rights, with a copy to State's Regional Local Agency Liaison, for review and approval by State's Small Business and DBE Program Manager. If State's review and approval are required, Agency shall not award any contracts under this Agreement prior to receiving written approval of said forms from State's Small Business and DBE Program Manager.
11. Agency shall comply with the goals or requirements for DBE, and OJT/ APPRENTICESHIP established by State for each federal-aid project.
12. If Agency'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 Agency regarding award as it applies to meeting the DBE goal assigned for that particular project. If State's Office of Civil Rights determines that Agency'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 Agency 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. Agency shall use the information provided by 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, Agency 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 Agency. Agency shall use the information provided by State's Office of Civil Rights verbatim and make no changes to the wordage when submitting to the contractor. Agency 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 Agency for finalizing and signature. Agency shall use verbatim the wordage provided by State's Office of Civil Rights in connection with the DBE goal issue. If Agency disagrees with the response, Agency may discuss with State's Office of Civil Rights, however, State's Office of Civil Rights has the final determination.
14. State shall provide support, compliance monitoring and on-site reviews (as required) for the DBE, EEO, and OJT/APPRENTICESHIP programs. State shall deliver to Agency the Standard Precon package for each project. State shall act on behalf of Agency regarding all Civil Rights contract administration activities and shall report any discrepancies or issues to Agency, not the Contractor. Agency shall forward the "Committed DBE Breakdown and Certification Form" to State's Office of Civil Rights for verification that the DBE goal continues to be met. Agency maintains responsibility to uphold the DBE, EEO, and OJT/APPRENTICESHIP programs with the contractor.

Construction Activities and Administration

1. Agency understands and agrees that certification is only for the low bid contracting process. If Agency wishes to use an alternate method of bidding other than low bid, Agency shall contact State's Regional Local Agency Liaison to obtain State's and/or FHWA written approval.
2. Agency may use Additive Alternate Bidding (aka Bid Alternates). Agency's first Additive Alternate Bidding project using the Certification Program will be considered a test project and Agency will need to inform State's Regional Local Agency Liaison at ninety (90) percent PS&E.
3. Agency agrees that contract administration, quality control, quality assurance, material sampling and testing will be accomplished in accordance with Agency's current standards for federal-aid projects, or Agency may use State's current Construction Manual. Said manuals are incorporated hereto by reference, and made a part of this Agreement.
4. Agency 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. Agency will need to inform State's Regional Local Agency Liaison of the determination at ninety (90) percent PS&E. Agency shall monitor labor compliance and prevailing wage rate compliance.
5. Agency 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. Agency will ensure that State is included as either a dual obligee or a named additional obligee under the performance bond. Proof of said bonding will be provided to State's Regional Local Agency Liaison by the acquiring Party.

6. If Agency awards a construction contract, Agency shall follow Agency's materials quality program. Agency shall process and pay all contractor progress estimates, make final contractor payment, check final quantities and costs, and oversee and provide inspection services during the construction phase of each project.
7. State will reimburse Agency for construction contractor payments within ten (10) working days of receipt of payment request from Agency. Once State's Regional Local Agency Liaison has received invoice from Agency, 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 the "Finance" Section of this Agreement.
8. Agency shall prepare contract and bidding documents, advertise for bid proposals, award all contracts, and conduct all contract administration. Upon Agency's award of the construction contract, Agency, 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. Agency 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 State has responsibility for inspection of such bridges.

Contract Claims and Contractor Change Orders

1. Agency shall follow Agency's procedures for contractor claims and Contract Change Orders as described in Agency's standards for federal-aid projects. Agency's contract specifications are required to include a process for dispute and claim resolution.
2. Agency cannot exceed any state or federal funding authorization without following State's process, and obtaining approval for an increase in project authorization.
3. FHWA retains approval authority over:
 - a. Waiver for Buy America provisions;
 - b. Any sensitive or controversial change, or any change for which FHWA review and approval is specifically requested;
 - c. Changes to scope of work or extension of project limits shown in the project documents previously approved by FHWA; and
 - d. Changes that affect environmental mitigation or commitments.

4. State retains approval authority over certain changes to the project. The notification of proposed changes must be sent to State's Regional Local Agency Liaison for approval prior to the Agency approving a Contract Change Order in any of the following areas:
 - 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

Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Regional Local Agency Liaison, who will contact State's Railroad Liaison on behalf of Agency. 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 Agency, or others. Agency 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

Agency 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 State's Regional Local Agency Liaison. Agency 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 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 Agency, or others. Agency may send a written request to State, at project expense, to arrange for utility relocations/adjustments lying within Agency 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. (Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.)

Maintenance Responsibilities

Agency 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.

General Provisions

1. Agency further 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. Agency 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 23 CFR parts 1.11, 140, 635, 710, and 771; 2 CFR 1201; Title 49 CFR parts 24 and 26; and 2 CFR 200 subpart F; Title 23, 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 the FAPG, *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*, *Local Contract Review Board Contracting Rules*, and Agency's applicable contracting rules of procedure adopted, pursuant 279A.060 and 279A.065(5). State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim, and not by reference.
3. Agency 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 Agency pertaining to work covered by the Supplemental Project Agreements to perform examinations and audits and make excerpts and transcripts. Agency is responsible for using its procedures, as approved by State, for project documentation and long term retention of project documentation. In all contracts, Agency 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. Agency 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 (2 CFR 1201).

Agency and State Indemnifications

CONTRIBUTION

1. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
2. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
3. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to

information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

ALTERNATIVE DISPUTE RESOLUTION

The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement and Supplemental Project Agreements. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

INDEMNIFICATION

1. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
2. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the 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 Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor 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 claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
3. Agency, subject to any limitations imposed by State law and the Oregon Constitution, agrees that on all projects where Agency is contracting for services pursuant to this Agreement or performing project management for the project to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all contract related claims and suits, including but not limited to all contract claims brought by any contractor arising out of the contractor's work, Agency's supervision of any individual project, or Agency's failure to comply with the terms of this Agreement and Supplemental Project Agreements.

Insurance

1. Agency shall require its 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 Agency. 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 two million dollars (\$2,000,000) per occurrence with an aggregate of six million dollars (\$6,000,000) applying separately to each annual period. FHWA must approve any exceptions to the maximum railroad protective insurance limits. Agency should contact local railroad for insurance requirements. The insurance coverages shall be in effect for the life of the contract.
2. Agency shall include State as a third party beneficiary in the specifications of Agency's construction contract on any projects, with express authority to enforce the terms and conditions of the contract.

Workers' Compensation Coverage

All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand dollars (\$500,000) must be included. Agency 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 Agency fails to comply with the requirements of the above-mentioned agreements, and after receipt of written notice from State, fails to correct such compliance issue 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 Agency, 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 Agency 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 Agency 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

1. Agency 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 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 one hundred thousand dollars (\$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 ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

Signature Authorities

1. Agency 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. Agency shall ensure that any contracts entered into with

consultants, contractors or subcontractors shall adhere to the same requirements as those required of Agency under this Agreement.

2. Agency's approval authorities for any work performed by Agency 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 State's Certification Program Manager upon execution of this Agreement. If any of the titles identified by Agency as having approval authority change, Agency shall immediately send a new letter to State's Certification Program Manager and State's Region 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. Agency agrees that the signatures on each project prospectus, Supplemental Project Agreement, contract, and all project development phases shall adhere to said approval authority.
3. Agency and State certify and represent that the individuals signing this Agreement have been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency and State.
4. The provisions of this Agreement shall apply to all federal-aid Supplemental Project Agreements Agency enters into with State. If needed, and agreed to by both State and Agency, 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 and incorporated exhibits constitute 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 acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Multnomah County, acting by and through
its elected officials

By _____
Title:

Date _____

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

By _____
Highway Division Administrator

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Agency Legal Counsel

Date _____

Agency Contact:

Ian B. Cannon
Multnomah County
1403 SE Water Avenue
Portland, OR 97214-3333
(503) 704-5170
ian.b.cannon@multco.us

State Contact:

Reem Khaki, PE
123 NW Flanders St.
Portland, OR 97221
(503) 731-8501
Reem.d.khaki@odot.state.or.us

APPROVAL RECOMMENDED

By _____
Certification Program Manager

Date _____

By _____
Region 1 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

Agency/State
Agreement No. 29110

STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

Agency is seeking Certification status in the following functional areas as marked below:

- ☒ Direct Appointment Consultant Selection
- ☒ Informal Consultant Selection
- ☒ Formal Consultant Selection
- ☒ Design
- ☒ Bridge Design
- ☒ Advertise, Bid and Award
- ☒ Construction Contract Administration

Agency/State
Agreement No.

After recording, return to:

EXHIBIT A
MEMORANDUM OF AGREEMENT AND ACKNOWLEDGEMENT OF FEDERAL ASSISTANCE
[State Recording Authority: ORS 93.710 and ORS 205.130(2)]

Agreement Number:

Project Name:

Key Number:

Supplemental Project Agreement No. _____ between the (Insert Agency Name) and the State of Oregon, Department of Transportation was executed on _____. Pursuant to paragraph _____, Agency Obligations, page _____ of the Supplemental Project Agreement, upon the recording of this document, the (Insert Agency Name) received federal funds for the Project described in the Supplemental Project Agreement. The property and assets under the jurisdiction of the (Insert Agency Name) were improved with the assistance from the United States Government. Such assistance was provided to (Insert Agency Name), in reimbursement of costs associated with the (Insert Project Name). The use and disposition of said property is subject to the terms of the above noted Supplemental Project Agreement, copies of which may be obtained from the Director of ODOT and is also subject to 2 CFR 1201. A description of the improved property is attached.

(Insert Agency Name)

By: _____
(Name of person)

(Notary Stamp)

Title: _____

State of Oregon: County of _____

Signed or attested before me on _____ by _____
(Date) (name(s) of person(s))

_____ My commission expires on _____.

STATE OF OREGON, DEPARTMENT OF TRANSPORTATION

By: _____

(Notary Stamp)

Title: Active Transportation Section Manager

State of Oregon: County of Marion

Signed or attested before me on _____ by _____
(Date) (name(s) of person(s))

_____ My commission expires on _____.

Oregon Department of Transportation; 555 13th St. NE, Suite 2, SE; Salem, OR 97301.