INTERSTATE AGREEMENT
Columbia River (Glenn Jackson) Bridge Repair
Oregon Bridge Number (09555)
Washington Bridge Number (205/1)

THIS Agreement is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and the STATE OF WASHINGTON, acting by and through the Washington Department of Transportation, hereinafter referred to as "WSDOT," collectively called the "Parties."

RECITALS

1. By the authority granted in ORS 190.110 and 190.420, ODOT may enter into agreements with public agencies in other states for joint or cooperative actions to the extent that the laws of the other state permit.

2. By the authority granted in ORS 381.005, ODOT may construct, reconstruct, purchase, rent, lease or otherwise acquire, improve, operate and maintain bridges over the Columbia River into the State of Washington.

3. By the authority granted in ORS 381.010, ODOT may enter into agreements with the State of Washington for the purpose of carrying out or putting into effect the right, power and authority granted by ORS 381.005.

4. By the authority granted in Revised Code of Washington, chapter 39.34 RCW and RCW 47.04.080, the Washington Department of Transportation may enter into agreements with public agencies in other states for joint or cooperative actions.

5. Interstate 205 in Multnomah County, Oregon is an Interstate Highway under the jurisdiction and control of the Oregon Transportation Commission. Interstate 205 in Clark County, Washington is an Interstate Highway under the jurisdiction and control of the WSDOT. Interstate 205, near Portland, Oregon and Interstate 205, near Vancouver, Washington connect via the Glenn Jackson Bridge, (Oregon Bridge Number 09555 and Washington Bridge Number 205/1) which passes over the Columbia River and contains the boundary between the states at that point, as shown on Exhibit A Project Location, attached hereto and made a part hereof, and herein after referred to as the "Bridge."

6. This Bridge is a free bridge, with no tolls charged by either state.

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

A. TERMS OF AGREEMENT

1. WSDOT and ODOT agree that there is a need to repair the deck joints on the Bridge, identified as Oregon Bridge Number 09555 and Washington Bridge Number 205/1, over the Columbia River, hereinafter referred to as the "Project." The approximate location of the Project is shown on Exhibit A.

2. The total Project cost is currently estimated at Two Million Six Hundred Sixty-Nine Thousand Dollars ($2,669,000.00), of which One Hundred Four Thousand Dollars ($104,000.00) is for Preliminary Engineering and Two Million Five Hundred Sixty-Five Thousand Dollars ($2,565,000.00) is for construction. WSDOT and ODOT funding shares shall be based on the actual direct and related indirect total cost of the Project. Each Party shall provide fifty (50) percent of the actual direct and related indirect total cost of the Project.

3. WSDOT's estimated costs for the Project are One Million Three Hundred Thirty-Four Thousand Five Hundred Dollars ($1,334,500.00), which is fifty (50) percent of the estimated total cost of the Project.

4. ODOT's estimated costs for the Project are One Million Three Hundred Thirty-Four Thousand Five Hundred Dollars ($1,334,500.00), which is fifty (50) percent of the estimated total cost of the Project.

5. The Parties agree that Two Million Six Hundred Sixty-Nine Thousand Dollars ($2,669,000.00) is only a Project estimate. Prior to exceeding the Project estimate, the Parties agree to meet to determine whether to amend the Project scope to stay within the estimate or to pay their proportionate shares of the additional Project costs and approve the increased costs by executing an amendment to this Agreement. The Parties further agree that additional Project costs may also include all costs associated with Project contractor claims and/or litigation, including arbitration damage awards or court judgments, including the costs of litigation, attorney fees and expert fees.

6. This Agreement shall be effective on the date all required signatures have been obtained and shall remain in effect until ODOT has completed the Project and accepted all amounts to be reimbursed by WSDOT under this Agreement or five (5) years from the date of execution, whichever occurs first, unless terminated earlier in accordance with Paragraph D.8, or extended by amendment in accordance with Paragraph D.12.

B. ODOT OBLIGATIONS

1. ODOT shall furnish all necessary labor, materials, and equipment required to perform the necessary preliminary engineering, including preparation of plans, specifications, and estimate of cost for the Project. All phases of the work

accomplished by ODOT shall require review and approval by WSDOT prior to proceeding to the next phase of the work.

2. The plans, specifications and estimate of cost shall be prepared by ODOT in accordance with the current State of Oregon Standard Specifications for Road, Bridge, and Municipal Construction, and amendments thereto, and adopted design standards, unless otherwise noted.

3. ODOT shall conduct the necessary field survey and investigations; obtain all permits required, prepare the plans, specifications, and estimate for the Project; and submit all data to WSDOT for its approval.

4. Upon WSDOT's approval of the plans, specifications, and estimate, ODOT shall prepare the contract documents and advertise for bids for construction of the Project pursuant to the terms of this Agreement.

5. ODOT shall award a contract to the lowest bidder if bidding requirements are met. In the event the bid exceeds the cost estimate as provided by this Agreement, ODOT shall request WSDOT approval prior to contract award. ODOT shall ensure its contractor complies with all applicable federal and State of Oregon laws and regulations. ODOT shall also advise the contractor that the contractor is required to comply with the laws of the State of Washington with respect to that portion of work to be done and materials to be furnished within the State of Washington.

6. ~~ODOT shall not enter into any subcontracts for design or contract administration~~ scheduled under this Agreement without obtaining prior written approval from WSDOT.

7. ODOT shall assume responsibility for administration of the contract, supervision of the Project, and certification of compliance with specifications.

8. ODOT shall furnish a monthly progress report to the WSDOT liaison person during construction phases of the Project. The monthly progress report shall briefly state the progress achieved during the previous one-month period and the overall progress to date, including costs incurred.

9. ODOT shall submit monthly invoices to WSDOT requesting reimbursement for fifty (50) percent of all Project costs incurred during the previous month. Such invoices shall be in a form identifying the Project and WSDOT Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed.

10. ODOT shall submit proposed change orders in excess of $10,000.00 to WSDOT's Project Engineer for review and approval prior to issuance of a change order to the contractor. ODOT has the right to issue change orders necessary to preserve public safety without first obtaining WSDOT approval. WSDOT agrees that the ODOT may

issue change orders of $10,000.00 or less without WSDOT approval, and WSDOT further agrees to reimburse ODOT for WSDOT's share of all change orders as provided in this Agreement, pursuant to ODOT Obligations, Paragraph 9. The ability to issue change orders under this provision does not eliminate the necessity to amend this Agreement, pursuant to Terms of Agreement, Paragraph 5, and General Terms, Paragraph 12, when costs, including proposed change orders, are expected to exceed the established Project cost estimate.

11. ODOT hereby grants to WSDOT a right of entry upon all land in which ODOT has an interest, within or adjacent to the right-of-way of the highway, for inspection purposes during design and construction of the Project.

12. ODOT shall comply with all federal and Oregon state laws applicable to the Project, including, without limitation, the federal Davis-Bacon Act and Miller Act. For those portions of the Project performed within the State of Washington, ODOT shall require its contractor to comply with the laws of the State of Washington.

13. ODOT shall compile and retain accurate cost accounting records for all phases of the Project. ODOT shall provide a written statement of its costs to date any time upon request by WSDOT.

14. All Project documents, invoices and reports required to be delivered to WSDOT's Project Engineer for this Agreement shall be delivered to the following address: WSDOT, Attention: Chris Tams, 11018 NE 51st Circle, Vancouver WA 98668-1709.

15. ODOT's Project Liaison for this Agreement is the Bridge Program Unit Manager, Bridge Section, or designated representative, Oregon Department of Transportation, 355 Capitol St. NE, Salem, Oregon 97301. Phone: (503) 986-3395. Any change to ODOT's Project Liaison and/or address shall be submitted to WSDOT in writing.

C. WSDOT OBLIGATIONS

1. WSDOT shall timely review, comment and approve or recommend modifications to all ODOT plans, specifications, and estimates prior to advertisement for bid and advise ODOT of WSDOT's approval or recommended modifications within three (3) weeks of receipt.

2. WSDOT shall timely review and approve change orders in excess of $10,000.00 and advise ODOT of its approval or recommended modifications within one (1) week of receipt. WSDOT agrees to reimburse ODOT for WSDOT's share of all change orders as provided in this Agreement pursuant to ODOT Obligations, Paragraph 10. WSDOT agrees that ODOT has the right to issue change orders necessary to preserve public safety without first obtaining WSDOT approval. In the event WSDOT does not approve a change order, WSDOT agrees to provide written justification. The Parties agree and acknowledge that delays in change order approval may

increase the over-all cost of the Project, for which each Party has a 50 percent obligation as provided in this Agreement.

3. Any change of WSDOT's invoice manager and/or mailing address shall be submitted to ODOT in writing.

4. WSDOT agrees to pay all adequately detailed and documented monthly invoices within thirty (30) days of receipt. Upon completion of the Project, WSDOT agrees to pay the final itemized and documented invoice from ODOT within forty-five (45) days from receipt of ODOT's invoice. The final invoice shall show a detailed summary of costs incurred, pursuant to ODOT Obligations, Paragraph 9, including final payments to contractor, ODOT's costs for preparation of plans, specifications and estimates, advertising for bids, and contract and construction administration.

5. WSDOT certifies, at the time it executes this Agreement, that sufficient funds have been appropriated and allotted within the current biennial budget to finance the current estimated costs pursuant to Terms of Agreement, Paragraph 3, of this Agreement.

6. WSDOT hereby grants to ODOT and its contractors, and their subcontractors, a right of entry upon all land in which WSDOT has an interest, within or adjacent to the right-of-way of the highway, for design and construction of the Project.

7. WSDOT shall assign a liaison to periodically review progress of the Project and assure the quality of work and materials. All contact between WSDOT's liaison and ODOT's contractor shall be through ODOT's Project Liaison. The WSDOT liaison shall be delegated the authority to review and approve proposed change orders over $10,000.00.

8. WSDOT's Project liaison for this Agreement is Chris Tams or a designated representative. Any change of WSDOT's liaison and/or address shall be submitted to ODOT in writing.

D. GENERAL PROVISIONS

1. Upon completion of the Project, representatives of ODOT and WSDOT shall confer with respect to the acceptance of the Project.

2. Upon final approval of this Agreement, two originals will be provided to ODOT and one original to WSDOT.

3. ODOT and WSDOT, as recipients of federal funds pursuant to this Agreement shall assume joint liability for any breach of any federal statutes, rules, program requirements, and grant provisions applicable to the federal funds, and shall, upon

any breach of any such conditions that requires the return of funds to the Federal Highway Administration, share the responsibility for repayment equally.

4. The Special Provisions for the contract work shall include a stipulation that:

   a. WSDOT shall be considered a third party beneficiary to the construction contract to the extent necessary to enforce any applicable Washington laws with respect to that portion of work to be done and materials to be furnished within the State of Washington.

   b. Contractor shall indemnify both ODOT and WSDOT and shall obtain and keep in effect during the term of the contract, Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage; contractual liability coverage for the indemnity provided under this Agreement and products/completed operations liability. Combine single limit per occurrence shall not be less than $2,000,000.00 and shall carry at a minimum personal injury and property damage insurance with a single limit of $1,000,000.00 for all claims arising out of a single accident or occurrence. Contractor shall also provide an additional $1,000,000.00 excess insurance coverage over the basic $1,000,000.00 coverage. Each annual aggregate limit shall not be less than $2,000,000.00. The contractor shall include ODOT and WSDOT as named insured on policies issues for this Project, or shall furnish an additional insured endorsement naming the same as additional insured to the contractor's existing public liability and property damage insurance.

      i. Before the contract is executed, the contractor shall furnish to ODOT and WSDOT, a certificate of insurance for the limits which will be in force and applicable to the Project.

      ii. The insurance coverage shall not be amended, altered, modified, or cancelled insofar as the coverage contemplated herein is concerned without at least forty-five (45) days notice mailed by registered mail to ODOT and WSDOT.

5. ODOT and WSDOT acknowledge and agree that each Party, the Secretary of State's Office of the States of Oregon and Washington, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of ODOT and WSDOT which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. The Party requesting access to the records shall bear the cost of copying such records. If any litigation, claim or audit is commenced, the records and accounts along with the supporting documentation shall be retained until all litigation, claim or audit findings have been resolved even though such litigation, claim or audit continues past the six (6) year retention period.

6. ODOT acknowledges that WSDOT is subject to Washington public contracting laws and regulations. In the event the public procurement(s) must conform to Washington law, the Parties agree that this Agreement may be amended to include provisions to comply with the laws governing WSDOT if the amendment provisions do not conflict with Oregon laws governing ODOT.

7. In the event that a dispute arises under this Agreement, it shall be resolved as follows: ODOT and WSDOT shall each appoint a member to a disputes board. These two members shall select a third member not affiliated with either agency. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. Each Party shall be responsible to pay all costs of their own member to participate on the disputes board. The Parties agree that all costs incurred by the appointed third party to the disputes board will be shared equally with each Party paying fifty (50) percent of the costs.

8. This Agreement may be terminated by either Party upon thirty (30) days notice in writing and delivered by certified mail or in person, under any of the following conditions:

   a. If the Party other than the terminating Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

   b. If the terminating Party fails to receive funding, appropriation, limitation or other expenditure authority sufficient to allow the Party to fulfill the obligations required by this Agreement.

   c. If federal or state laws, regulation or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if either Party is prohibited from paying for such work from the planned funding source.

9. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

10. In the event of termination of this Agreement, resulting in the termination of the repair contract, each Party shall be responsible for paying fifty (50) percent of the cost (1) to restore the bridge to a safe and sound condition and (2) the termination costs of the Project contract, including any subcontracts.

11. As federal funds are involved in this Agreement, ODOT agrees to include Exhibits B, Contractor Certification and C, Federal Provisions, Oregon Department of Transportation as part of the bridge construction contract and to require its

contractor to comply with the provisions contained in Exhibits "B" and "C", which are attached hereto and made a part hereof.

12. No amendment, waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by authorized representatives of each Party and all necessary approvals have been obtained. Any such amendment, waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

13. 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.

14. This Agreement and attached exhibits constitute the entire Agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT or WSDOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT or WSDOT of that or any other provision.

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

This Project is in the 2006-2009 Statewide Transportation Improvement Program, (Key #14833) that was approved by the Oregon Transportation Commission on August 17, 2005 (or subsequently approved by amendment to the STIP).

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways; the authority to approve and sign agreements over $75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

WSDOT/ODOT
ODOT No. 23896
WSDOT No. GCA 5171

STATE OF WASHINGTON, by and through its Washington Department of Transportation

By _____
Regional Engineering Manager

Date 10-12-07

APPROVED AS TO FORM

By _____
Assistant Attorney General

Date 10-4-07

STATE OF OREGON, by and through its Department of Transportation

By _____
Deputy Director, Highways

Date 30OCT07

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief Engineer

Date 10-29-07

By _____
State Bridge Engineer

Date 10/26/07

By _____
Region 1 Manager

Date 10/23/07

APPROVED AS TO LEGAL SUFFICIENCY

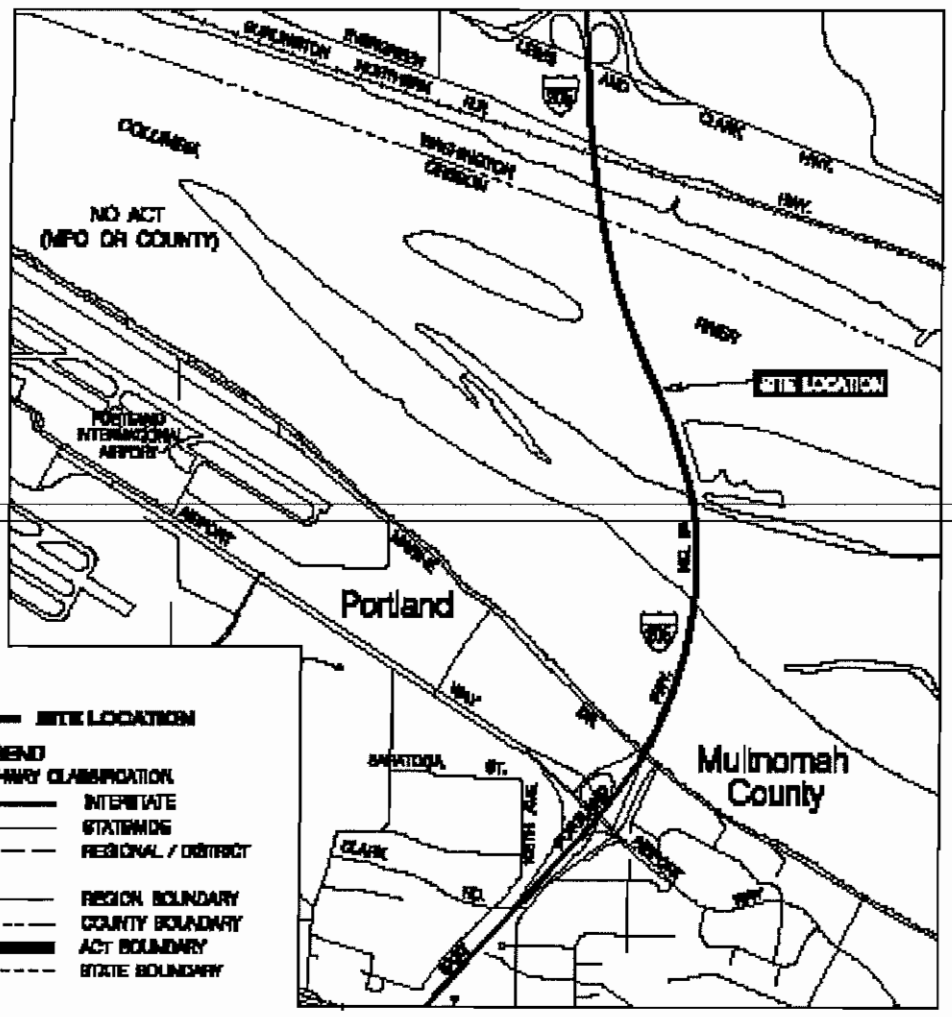
By _____
Assistant Attorney General

Date 10/18/07

EXHIBIT A
Misc. Contracts and Agreements
ODOT No. 23896
WSDOT No. GCA 5171

PROJECT LOCATION

ODOT REGION 1



I-205: COLUMBIA RIVER (GLENN JACKSON) BR #09555, HWY 84

"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information."

SCALE

0 (1/4 MILE)

DIGITAL REPRODUCTION MAP
APRIL 2000

EXHIBIT B

CONTRACTOR CERTIFICATION

Contractor certifies by signing this Contract that Contractor has not:

(a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,

(b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or

(c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

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

DEPARTMENT OFFICIAL CERTIFICATION

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

(a) Employ, retain or agree to employ or retain, any firm or person or

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

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

EXHIBIT C
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

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

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

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

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

EXCEPTIONS:

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

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

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS–PRIMARY COVERED TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.

2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.

4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's

Program Section (Tel. (503) 986-27103400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.

7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

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

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

- Appendix B of 49 CFR Part 29 -

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

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when

submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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

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

a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

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

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has

not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.

3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

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

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

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.

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

   a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment,

upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

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

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

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

   a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or

   b. Cancellation, termination or suspension of the agreement in whole or in part.

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

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

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

DBE POLICY STATEMENT

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

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

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as

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

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

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

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

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL __0__ %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

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

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