

INTERSTATE AGREEMENT
Lewis and Clark Bridge
Substructure Painter
GCA 5942

This Agreement is made and entered into between the STATE OF WASHINGTON, Department of Transportation, hereinafter "WSDOT," and the STATE OF OREGON, Department of Transportation, 355 Capitol Street NE, Room 301, Salem, OR 97301, hereinafter "ODOT."

WHEREAS, WSDOT is authorized by the Revised Code of Washington (RCW) 47.52.020 and RCW 47.04.080 to enter into this Agreement, and ODOT is authorized by Oregon Revised Statutes (ORS) 190.410 to 190.440 and ORS 381.005 to 381.820 to enter into this Agreement, and

WHEREAS, WSDOT and ODOT recognize the need to paint the substructure of the Lewis and Clark Bridge over the Columbia River between Rainier, Oregon and Longview, Washington, hereinafter "PROJECT," and

WHEREAS, WSDOT and ODOT now wish to define the responsibilities and funding for the PROJECT, and

WHEREAS, this bridge is a free bridge, with no tolls charged by either Party,

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

1. TERMS OF AGREEMENT

- 1.1 The total PROJECT cost is estimated at \$8,272,380.00. 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 percent (50%) of the actual direct and related indirect total cost of the PROJECT. This cost shall include, but not be limited to, WSDOT administrative costs, such as WSDOT surveys, investigations, permitting, bidding/award, contract administration and applicable Washington State Sales Tax.
- 1.2 ODOT's estimated costs for the PROJECT are \$4,136,190.00, which is fifty percent (50%) of the estimated total cost of the PROJECT.
- 1.3 WSDOT's estimated costs for the PROJECT are \$4,136,190.00, which is fifty percent (50%) of the estimated total cost of the PROJECT.

- 1.4 The Parties agree that \$8,272,380.00 is only a PROJECT estimate. Should the total PROJECT costs exceed \$8,272,380.00, each Party agrees to meet to determine how to amend this Agreement to pay its proportionate share of the additional PROJECT costs and reflect the increased costs, prior to exceeding the PROJECT estimate. 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's fees and expert fees.

2. WSDOT OBLIGATIONS

- 2.1 WSDOT shall conduct the necessary field survey and investigations; obtain all permits required; prepare the plans, specifications, and estimates for the PROJECT; and submit all pertinent data to ODOT.
- 2.2 WSDOT shall present invoices for fifty percent (50%) of actual direct and related indirect costs incurred by WSDOT on behalf of the PROJECT directly to ODOT's PROJECT manager for review and approval. Such invoices shall be in a form identifying WSDOT's PROJECT contract number and ODOT's agreement number for this Agreement, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one month duration, based on actual direct and related indirect expenses incurred. WSDOT shall send invoices to the Bridge Program Unit Manager, Bridge Section, Oregon Department of Transportation, 355 Capitol Street NE, Salem, Oregon 97301. Any change to this address shall be submitted by ODOT in writing to WSDOT.
- 2.3 WSDOT shall notify ODOT in writing, of changes to the proposed construction schedule and the estimated PROJECT cost.
- 2.4 Upon receipt of approval by ODOT of the plans, specifications, and estimate, WSDOT shall prepare the contract documents and advertise the PROJECT for bid. WSDOT agrees to include within the contract documents the attached Exhibits A and B, which are incorporated herein by this reference, and require that the bidders sign and provide executed certifications with bid submissions to be provided to ODOT.
- 2.5 WSDOT shall award a contract to the lowest bidder if bidding requirements are met. In the event the bid exceeds the estimate as provided by this Agreement, WSDOT shall request ODOT approval prior to contract award. WSDOT will require the contractor to be obligated to comply with all applicable federal law and regulations and Washington State law and regulations. WSDOT shall require the contractor to comply with Oregon State laws and regulations with respect to that portion of the work to be performed and materials to be furnished within the State of Oregon.
- 2.6 WSDOT shall be responsible for administration of the contract, supervision of the PROJECT, and certification of compliance with specifications.
- 2.7 WSDOT shall furnish copies of the monthly progress reports to the ODOT liaison person during the term of the PROJECT. The monthly progress reports briefly state the PROJECT's

progress achieved during the previous one-month period and the overall PROJECT progress to date, including costs incurred.

- 2.8 WSDOT shall maintain accurate cost records for all work. Overhead, supervision and other administrative costs, including applicable Washington State Sales Tax, related to the work performed under the terms of this Agreement shall be accumulated and computed in accordance with acceptable accounting procedures.
- 2.9 WSDOT shall submit proposed change orders in excess of \$10,000.00 to the ODOT liaison person for review and approval pursuant to Section 3.3 prior to issuance of a change order to the contractor. WSDOT has the right to immediately issue change orders necessary to preserve public safety.

3. ODOT OBLIGATIONS

- 3.1 ODOT shall reimburse WSDOT for fifty percent (50%) of the actual direct and related indirect costs of the total PROJECT cost in accordance with Section 1. ODOT agrees to make payment to WSDOT within forty-five (45) days from receipt of a WSDOT invoice. Payments shall be submitted to: Department of Transportation, Transportation Building, Olympia, Washington 98504-7420, Attention: Cashier. Payment for invoices shall be in a form identifying WSDOT's PROJECT contract number and WSDOT's agreement number for this Agreement.
- 3.2 ODOT shall review all plans, specifications and estimates received from WSDOT prior to bid and advise WSDOT of its approval or recommended modifications within ten (10) working days of receipt thereof.
- 3.3 ODOT shall review and approve change orders in excess of \$10,000.00 and advise WSDOT of its approval or recommended modifications within seven (7) working days. In the event ODOT does not approve a change order, written justification will be provided.
- 3.4 ODOT certifies that sufficient funds are available and authorized for this PROJECT.
- 3.5 ODOT shall assign a liaison person to periodically review progress of the PROJECT and assure the quality of work and materials. All contact between ODOT's liaison person and WSDOT's contractor shall be through WSDOT's PROJECT engineer. The liaison person shall be delegated the authority to review and approve proposed change orders. Expenses incurred by the liaison may be charged to the cost of the PROJECT.
- 3.6 ODOT's liaison person for this Agreement will be: Bridge Program Unit Manager, 355 Capitol Street NE, Salem OR 97301, or designee. Any change of ODOT's liaison person and/or address shall be submitted to WSDOT in writing.

4. GENERAL PROVISIONS

- 4.1 The Special Provisions for the construction contract work for this PROJECT shall include the following stipulations:

- a. Contractor shall indemnify ODOT and WSDOT and name ODOT and WSDOT as third party beneficiaries of the resulting contract, and to obtain and keep in effect during the term of the contract Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage, Commercial Automobile Liability Insurance, and Owners and Contractors Protective Insurance. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this Agreement and products/completed operations liability.
- b. Contractor shall indemnify, defend and hold harmless ODOT and WSDOT and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under this Contract.
- c. Commercial General Liability Insurance. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract and for a period of one year following final acceptance of the PROJECT, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is satisfactory to ODOT and WSDOT. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$ 3,000,000.00 for each job site or location. Each annual aggregate limit shall not be less than \$3,000,000.00. This liability coverage shall be endorsed to include pollution liability coverage under ISO Form CG 0039 12 04, or its equivalent.
- d. Commercial Automobile Liability Insurance. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.00.
- e. Owners and Contractors Protective Insurance. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Insurance providing bodily injury and property damage liability coverage with limits of \$3,000,000.00 per occurrence and in the aggregate for each policy period, written on Insurance Services Office (ISO) form CG0009 together with Washington State Department of Transportation Amendatory Endorsement No. CG 29 08, specifying ODOT and WSDOT as named insureds.
- f. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the Contract shall include ODOT and WSDOT and their divisions,

officers and employees as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

- g. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without forty-five (45) days written notice from the Contractor or its insurer(s) to ODOT and WSDOT. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.
 - h. Furnish each, ODOT and WSDOT, a certificate of insurance for the limits which will be in force and applicable to the PROJECT.
- 4.2 During the progress of the PROJECT and for a period of not less than three (3) years from the date of completion of the PROJECT, the records and accounts pertaining to the PROJECT work, and accounting therefore, are to be kept available for inspection and audit by ODOT, WSDOT and/or the Federal Government and copies of all records, accounts, documents, or other data pertaining to the PROJECT will be furnished upon request. If any litigation, claims, or audit is commenced, the records and accounts, along with supporting documentation, shall be retained until all litigation, claims, or audits are complete even if such proceedings continue beyond the three (3) year records retention period.
- 4.3 To the maximum extent permitted by the constitutions and laws of the State of Oregon and the State of Washington, each Party to this Agreement shall protect, defend at its own cost, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's intentional or negligent acts or omissions while performing pursuant to the terms of this Agreement. This indemnification shall survive any termination of this Agreement.
- 4.4 WSDOT acknowledges that ODOT or the PROJECT contractor may be subject to Oregon public contracting laws and regulations. In the event that public procurement(s) must conform to Oregon law, the Parties agree to make best efforts to amend either this Agreement or the PROJECT contract to comply with the laws governing ODOT or contract work performed within the State of Oregon.
- 4.5 In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and ODOT shall each appoint a member to a disputes board, these two (2) members shall select a third member not affiliated with either Party. WSDOT and ODOT will share equally the cost of the third member. 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.

- 4.6 Neither ODOT nor WSDOT may terminate this Agreement without the concurrence of the other Party once the PROJECT contract is awarded. Termination shall be in writing and signed by both Parties, except as follows:
- a. Either Party may terminate this Agreement only prior to the award of the PROJECT contract if a Party fails to secure funding, appropriations, limitations or other expenditure authority sufficient to allow the Party to continue to perform under this Agreement.
 - b. In the event of a termination of this Agreement, resulting in the termination of the PROJECT contract, each Party shall be responsible for paying fifty (50%) percent of the cost (1) to restore the Lewis and Clark Bridge to a safe and sound condition and (2) the termination costs of the PROJECT contract, including any subcontracts.
 - c. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 4.7 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.

5. RIGHT OF ENTRY

- 5.1 WSDOT hereby grants to ODOT the right of entry upon all land in which WSDOT has an interest, within or adjacent to the right of way of WSDOT's highway and bridge portion, for inspection purposes during the PROJECT work.
- 5.2 ODOT hereby grants to WSDOT the right of entry upon all land in which ODOT has an interest, within or adjacent to the right of way of ODOT's highway and bridge portion, for the purpose of performing the PROJECT work authorized by this Agreement.

6. MODIFICATIONS

- 6.1 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 ODOT and WSDOT. 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 and/or WSDOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT and/or WSDOT of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date written by the Party last signed below.

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

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways to approve and sign agreements over \$75,000.00 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Oregon Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director.

<p>STATE OF OREGON, by and through its Transportation Commission</p> <p>By: <u>[Signature]</u> Deputy Director, Highways</p> <p>Date: <u>12/25/08</u></p> <p>APPROVAL RECOMMENDED</p> <p>By: <u>[Signature]</u> Technical Services Manager/Chief Engineer</p> <p>Date: <u>12-17-08</u></p> <p>By: <u>[Signature]</u> State Bridge Engineer</p> <p>Date: <u>12-17-08</u></p> <p>By: <u>[Signature]</u> Region 1 Manager</p> <p>Date: <u>12/16/08</u></p> <p>APPROVED AS TO LEGAL SUFFICIENCY FOR ODOT:</p> <p>By: <u>[Signature]</u> Assistant Attorney General</p> <p>Date: <u>12/16/08</u></p>	<p>STATE OF WASHINGTON, by and through its Secretary of Transportation</p> <p>By: <u>[Signature]</u> for Bart Gemhart, Regional Engineering Manager</p> <p>Date: <u>12-17-2008</u></p> <p>APPROVED AS TO FORM FOR WSDOT:</p> <p>By: <u>[Signature]</u> Assistant Attorney General</p> <p>Date: <u>12-12-08</u></p>
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**EXHIBIT A
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 B
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 or default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-2710)

to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction

knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

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

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

- Appendix B of 49 CFR Part 29 -

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

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and

- "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
 6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
 7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
 8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**
- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

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

such fee, commission, percentage, brokerage fee, gift or contingent fee.

2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

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

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

prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for

employment without regard to race, creed, color, sex or national origin.

4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

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.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

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.