



Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

Transportation Building

355 Capitol St. NE

Salem Oregon 97301

CITY OF NEWBERG

CITY RECORDER INDEX NO. 1765

FILE CODE:

October 2, 2000

Yamhill County
2060 Lafayette Avenue
McMinnville, OR 97128-9298

~~City of Newberg~~
414 E. First St.
Newberg, OR 97132

City of Dundee
P.O. Box 220
Dundee, OR 97115-0220

First Federal Savings and Loan Association of McMinnville
c/o David Haugeberg
118 NE 3rd Street
McMinnville, OR 97128

A-dec Inc.
c/o Sonja Haugen
P.O. Box 1060
Newberg, OR 97132

AGR

Enclosed for your records is a fully executed copy of an agreement to accomplish development work on the Newberg-Dundee Transportation Improvement Project's Environmental Impact Statement.

We have retained a fully executed copy of this agreement for the Department of Transportation's files.

Fran Neavoll

Fran Neavoll, Agreement Specialist
Construction Contracts Unit
Roadway Engineering Section

Enclosure

FN:ws

*10/13/2000
Copy to Kathy
Rled. Be
Orig. since the copy is
not very like
the document provided
Dore*



July 24, 2000

Agreement No. 17961

COOPERATIVE IMPROVEMENT AGREEMENT
Newberg-Dundee Transportation Improvement Project

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"; YAMHILL COUNTY, acting by and through its designated officials, hereinafter referred to as "County"; the CITY OF NEWBERG, acting by and through its designated officials, hereinafter referred to as "Newberg"; the CITY OF DUNDEE, acting by and through its designated officials, hereinafter referred to as "Dundee"; FIRST FEDERAL SAVINGS AND LOAN OF MCMINNVILLE, acting by and through its board of directors, hereinafter referred to as "First Federal"; and A-DEC INC., acting by and through its board of directors, hereinafter referred to as "A-dec Inc.".

RECITALS

1. Highway 99W, also known as Pacific Highway West, is a part of the state highway system under the jurisdiction and control of ODOT.
2. By the authority granted in ORS 366.770, 366.775, and 190.110, ODOT may enter into cooperative agreements with cities, counties, and other units of local government for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions agreeable to the contracting parties.
3. By the authority granted in ORS 366.425, ODOT may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State of Oregon. Money so deposited shall be disbursed for the purpose for which it was deposited.

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

TERMS OF AGREEMENT

1. Under such authority, the parties to this Agreement hereby enter into an agreement to accomplish development work on the Newberg-Dundee Transportation Improvement Project's Environmental Impact Statement (EIS), hereinafter referred to as "Project".
2. The Project shall be paid for with funds from each of the parties to this Agreement.

VC 80#00-572

3. The Project shall be conducted as a part of the Transportation Equity Act for the 21st Century, Subtitle F, Section 117, High Priority Projects. The total Project cost is estimated at \$941,000. The Federal funds are limited to \$375,000, subject to annual obligation authority imposed by the appropriations bill. The Federal pro-rata share funding on this Project is 80 percent. ODOT shall be responsible for the match for the Federal funds and for any costs over the Federal funds plus the contributions from the other five parties to this Agreement. The estimate for the total Project cost is subject to change.
4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project.

ODOT OBLIGATIONS

1. ODOT shall conduct the necessary project development work, pay any consultant costs, provide project management services and other necessary functions for administration of the work to be completed under this Agreement.
2. After January 1, 2001, ODOT shall send to each of the other parties to this Agreement a letter of request for the payments described in this Agreement, unless payment has already been made. Payments are due 30 days after receipt of the letter of request.
3. If all parties have not contributed the entirety of their shares to ODOT within 30 days of the date they received the letters of request, ODOT shall refund, within 30 days of the date this Agreement was terminated, any contributions that were made.
4. ODOT shall be responsible for the costs under this Agreement that are not covered by the Federal funds and the lump sum payments made by the other five parties.
5. ODOT shall send to the other parties to this Agreement copies of any Project documents produced from the work under this Agreement.
6. ODOT shall not expend any money contributed under this Agreement until County, Newberg, Dundee, First Federal and A-dec Inc. have each contributed the entirety of their shares.

COUNTY OBLIGATIONS

1. County shall send to ODOT, after January 1, 2001, and within 30 days of receipt of a letter of request from ODOT, a lump sum payment of \$150,000 to be used toward the EIS work.

2. County represents that this Agreement is signed by personnel who have been duly authorized to do so by the County governing body.

NEWBERG OBLIGATIONS

1. Newberg shall send to ODOT, after January 1, 2001, and within 30 days of receipt of a letter of request from ODOT, a lump sum payment of \$50,000 to be used toward the EIS work.
2. Newberg represents that this Agreement is signed by personnel who have been duly authorized to do so by the City of Newberg governing body.

DUNDEE OBLIGATIONS

1. Dundee shall send to ODOT, after January 1, 2001, and within 30 days of receipt of a letter of request from ODOT, a lump sum payment of \$5,000 to be used toward the EIS work.
2. Dundee represents that this Agreement is signed by personnel who have been duly authorized to do so by the City of Dundee governing body.

FIRST FEDERAL OBLIGATIONS

1. First Federal shall send to ODOT, before January 1, 2001, or within 30 days of receipt of a letter of request from ODOT, whichever occurs first, a lump sum payment of \$10,000 to be used toward the EIS work.
2. First Federal represents that this Agreement is signed by personnel who have been duly authorized to do so by First Federal's board of directors.

A-DEC INC. OBLIGATIONS

1. A-dec Inc. shall send to ODOT, after January 1, 2001, and within 30 days of receipt of a letter of request from ODOT, a lump sum payment of \$10,000 to be used toward the EIS work.
2. A-dec Inc. represents that this Agreement is signed by personnel who have been duly authorized to do so by A-dec Inc.'s board of directors.

GENERAL PROVISIONS

1. This Agreement may be terminated by written mutual consent of all parties.
2. ODOT may terminate this Agreement effective upon delivery of written notice to all parties, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.
 - b. If federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited, or ODOT is prohibited from paying for such work from the planned funding source.

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

3. If County, Newberg, Dundee, First Federal and A-dec Inc. have not each contributed the entirety of their shares to ODOT either within 30 days of the date they received letters of request from ODOT or prior to receiving the letter of request, this Agreement shall automatically terminate and ODOT shall refund all contributions within 30 days of the date the Agreement was terminated.
4. All parties agree that Project deliverables will be determined through discussions, involving all parties to this Agreement, with the Project consultant.
5. All employers working under this Agreement are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.
6. All parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, all parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.
7. All parties acknowledge and agree that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writing of all parties that are pertinent to this Agreement to perform examinations and audits and make

excerpts and transcripts for a period of three years after completion of Project. Copies of applicable records shall be made available upon request.

8. As Federal funds are involved in this Agreement, Exhibits A and B are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by County, Newberg, Dundee, First Federal, and A-dec Inc.
9. 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 any party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provisions of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

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

SIGNATURE PAGE TO FOLLOW

This Project was approved by the Oregon Transportation Commission on October 13, 1999, as part of the 2000-2003 Statewide Transportation Improvement Program (STIP), Key 9320. The Oregon Transportation Commission on March 18, 1999, approved Subdelegation Order 2, in which the Director grants authority to the Executive Deputy Director/Chief Engineer to approve and execute agreements over \$75,000 when the work is related to a project included in the STIP.

STATE OF OREGON, by and through its
Department of Transportation

By Thomas D. Lulay
Executive Deputy Director/Chief Engineer

Date 9/22/00

APPROVAL RECOMMENDED

By Thomas H. Hunsaker
Region 2 Manager

Date 8/31/00

By DAVE SUSAN
Area 3 Manager

Date 8/31/00

A-DEC INC., by and through its designated
officials

By Joseph A. Christen
Title Vice Pres.

By _____

Title _____

Date _____

FIRST FEDERAL SAVINGS AND LOAN OF
MCMINNVILLE, by and through its designated
officials

By Mabel W.

Title President

By Walter L. Stehli

Title Secretary

Date 8-25-00

YAMHILL COUNTY, by and through its
designated officials

By Ted Logunyszynski
Title Chair, BOC

By Robert Johnstone

Title Commissioner

Date 7-27-00

CITY OF NEWBERG, by and through its
designated officials

By LL Cor

Title Mayor

By Diane Cole

Title City Recorder

Date August 7, 2000

CITY OF DUNDEE, by and through its
designated officials

By J. C. Koch

Title Mayor

By Georgie Smith

Title City Administrator

Date 8/24/00

SIGNATURES CONTINUE ON NEXT PAGE

APPROVED AS TO LEGAL SUFFICIENCY

By 
Assistant Attorney General

Date 9/19/00

APPROVED AS TO LEGAL SUFFICIENCY

By NA
County Legal Counsel

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By NA
City of Newberg Legal Counsel

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By NA
First Federal Savings and Loan of McMinnville
Legal Counsel

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By NA
City of Dundee Legal Counsel

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By NA
A-dec Inc. Legal Counsel

Date _____

Contact List:

Yamhill County
2060 Lafayette Avenue
McMinnville, OR 97128-9298

City of Newberg
414 E. First St.
Newberg, OR 97132

City of Dundee
PO Box 220
Dundee, OR 97115-0220

First Federal Savings and Loan Association of McMinnville
c/o David Haugeberg
118 NE 3rd Street
McMinnville, OR 97128

A-dec Inc.
c/o Sonja Haugen
PO Box 1060
Newberg, OR 97132

EXHIBIT A (Local Agency or State Agency)

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 consultant) 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 consultant), 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.

AGENCY OFFICIAL CERTIFICATION (ODOT)

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

I. 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 proposal 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 application/proposal 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 attach an explanation to this proposal.

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 Oregon Department of Transportation 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 to whom this proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by submitting this proposal 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 submitting this proposal 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 proposal 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 submission of this proposal, 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 attach an explanation to this proposal.

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 Oregon Department of Transportation (ODOT) 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 ODOT 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 ODOT 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 Request for Proposal/Qualification 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 ODOT'S
DBE PROGRAM REQUIREMENT
CONTACT OFFICE OF CIVIL RIGHTS AT
(503)986-4354.