

RESOLUTION NO. 883

A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT FOR RIGHT OF WAY SERVICES BETWEEN THE OREGON DEPARTMENT OF TRANSPORTATION AND THE CITY OF PRINEVILLE FOR THE 4TH STREET EXTENSION PROJECT.

WHEREAS, the City of Prineville was notified on September 25, 2000 that the Oregon Transportation Commission had approved the City of Prineville's Local Street Networks Fund award in the amount of \$474,785.

WHEREAS, by Resolution No. 882, the City of Prineville authorized entering into an Intergovernmental Agreement for Design and Construction services with ODOT.

WHEREAS, the City of Prineville lacks the technical resources to acquire the necessary rights of way for the 4th Street Extension Project.

WHEREAS under ORS190.110 the City and ODOT may enter into cooperative agreements for the purpose of accomplishing certain types of improvement projects.

WHEREAS, the City desires to enter into an agreement with the Oregon Department of Transportation to provide services to acquire necessary rights of way for the 4th Street Extension Project.

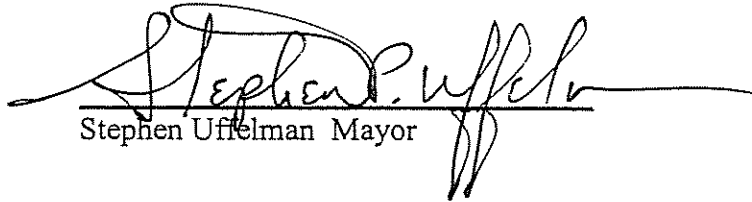
THE CITY OF PRINEVILLE DOES RESOLVE AS FOLLOWS:

The City finds that it is necessary and desirable to execute an agreement with the Oregon Department of Transportation to provide right of way acquisition services necessary for the 4th Street Extension Project.

1. ODOT will draw funds from the Local Street Network award for the actual costs incurred therein, and account for same to the City.
2. The Mayor and the City Manager are authorized to execute an agreement with the Oregon Department of Transportation, Intergovernmental Agreement for Right Of Way Acquisition, substantially in conformance to the attached.

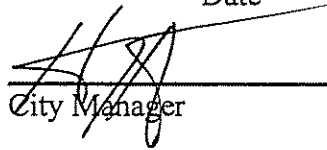
APPROVED BY THE CITY COUNCIL ON THE 27th Day of February, 2001.

APPROVED BY THE MAYOR ON THE 27th DAY OF February, 2001.



Stephen Uffelman Mayor

ATTEST 2-27-01
Date



City Manager

INTERGOVERNMENTAL AGREEMENT FOR RIGHT OF WAY SERVICES

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 City of Prineville, acting by and through its City Council hereinafter referred to as "Agency"

RECITALS:

1. By the authority granted in ORS 190.110, 283.110, 366.770 and 366.775, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. That certain *East Fourth Street* is a City street, under the jurisdiction and control of Agency, and Agency may enter into an agreement for the acquisition of real property by ODOT. Said real property to be used as part of right of way for road, street or construction of public improvement. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "project".

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, Agency wishes to retain the services of ODOT to perform the project identified in Recital 2 and shown in Special Provisions Exhibit A, attached hereto and by this reference made a part hereof. Under no conditions shall LSN Funds & obligations for said services exceed a maximum of \$150,000.00, including all expenses.
2. The work shall begin on the date all required signatures are obtained and shall be completed no later than November 30, 2002, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the parties in carrying out this Agreement is set out in the Special Provisions Exhibit A, attached hereto and made a part of this Agreement.
4. It is further agreed both parties will strictly follow the rules, policies and procedures of the "Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970" as amended, ORS 281.060, ORS 35.346, State of Oregon Right of Way Manual, and Federal Highway Administration Federal Aid Policy Guide.

ODOT OBLIGATIONS:

1. ODOT shall perform the work described for it in Special Provisions Exhibit A, the cost of work shall not exceed the agreed \$150,000.00.
2. With the exception of work related to appraisals, ODOT shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. ODOT agrees to 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, ODOT expressly agrees 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.

4. ODOT shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
5. ODOT, its subcontractors, if any, and 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.

AGENCY OBLIGATIONS:

1. Agency shall perform the work described for it in Special Provisions Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient Local Street Network Funds (LSN) funds are available and authorized for expenditure to finance costs of this Agreement.
3. Agency's right of way contact person for this Agreement is Ron Kleinschmit.

PAYMENT FOR SERVICES and EXPENDITURES:

1. In consideration for the services performed by ODOT, ODOT will draw from LSN Funds or reimburse ODOT for all costs and services provided for in this agreement. Said reimbursement shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to ODOT in accordance with the current State Department of Administrative Services' rates.
2. FOR PROJECTS IN ODOT STIP (STATE TRANSPORTATION IMPROVEMENT PROGRAM): ODOT will draw on LSN Funds for reserves of State employees working on project, direct costs, costs of rental equipment used, and per-diem expenditures.
3. FOR PROJECTS NOT IN ODOT STIP:
 - a. State shall upon execution of this Agreement, be authorized to draw from LSN Funds., in an amount equal to the estimate of costs to be incurred by State for the project. The preliminary estimate of costs is \$150,000.00 (*include total estimated cost of project, including land if State is to close transactions*). Additional deposits, if any, shall be made as needed upon request from State and acceptance by Agency. Requests for additional deposits, shall be accompanied by an itemized statement of expenditures and an estimated cost to complete project.
 - b. ODOT shall draw from authorized LSN funds for all salaries and payroll reserves of State employees working on project, direct costs, costs of rental equipment used, and per-diem expenditures, plus 10% surcharge on salary costs to cover administrative costs of Right of Way Section.
 - c. ODOT shall present invoices for 100% of actual costs incurred by ODOT on behalf of the project directly to Agency's right of way contact for review and approval. Such invoices shall be in a form identifying the project and agreement number, 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 expenses incurred.
 - d. Upon completion of right of way acquisition and receipt from State of a final itemized statement, ODOT draws on the LSN fund an amount equal 100% of the final total cost.

GENERAL PROVISIONS:

1. This Agreement may be terminated by either party upon 30 days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
 - a. If either party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

b. If either party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within 10 days or such longer period as may be authorized.

c. If Agency fails to receive LSN funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.

d. 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 if Agency 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.

2. Agency acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
3. If federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
4. If federal funds are involved in this Agreement, Agency, as a recipient of grant funds, pursuant to this Agreement with ODOT, shall assume sole liability for Agency's breach of the conditions of the grant, and shall, upon Agency's breach of grant conditions that requires ODOT to return funds to the federal agency, the grantor, hold harmless and indemnify ODOT for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this agreement.
5. 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 to enforce any provision 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.

The Oregon Transportation Commission approved on March 18, 1999, Subdelegation Order No. 4 in which the Director and Executive Deputy Director/Chief Engineer grants authority to the Technical Services Manager to approve and execute all Department real property deeds, contracts, agreements, and other documents pertaining to real property transactions. The Technical Services Manager, by way of Letter of Authority dated January 28, 1999, under its item 6, authorizes the Right of Way Manager to approve and execute agreements with other governmental jurisdictions to employ Right of Way Section staff.

CITY OF PRINVILLE,
by and through its City Council

By _____
(Title)

Date _____

By _____
(Title)

By _____
(Title)

APPROVED AS TO FORM:

(Agency) Attorney and Counsel

Date _____

STATE OF OREGON,
by and through its
Department of Transportation

By _____
Deolinda G. Jones
Right of Way Manager

Date _____

Department of Justice approval as to legal sufficiency required when amount of funds paid to or from state agency >\$100,000. Amounts paid between State agencies is not subject to this requirement.

APPROVED AS TO LEGAL
SUFFICIENCY (req'd as noted above)

By Assistant Attorney General

Date October 5, 2000

SPECIAL PROVISIONS EXHIBIT A
THINGS TO BE DONE BY STATE OR AGENCY

A. Preliminary Phase (insert either State or Agency on each line)

1. State will provide preliminary cost estimates.
2. State will make preliminary contacts with property owners.
3. State will gather and provide data for environmental documents.
4. State will develop access and approach road list.
5. State will help provide field location and project data.

B. Acquisition Phase

1. General:
 - a. When doing the Acquisition work, State will provide Agency with a status report of the project monthly.
 - b. Title to properties acquired shall be in the name of the Agency.
 - c. Prior to the initiation of acquisitions, Agency will adopt a resolution of intention and determination of necessity in accord with ORS 281.520, authorizing acquisition and condemnation. If the State Department of Justice is to handle condemnation work, that information needs to be included in the resolution adopted by the Agency. Prior approval by Department of Justice is required.
2. Legal Descriptions:
 - a. State will provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
 - b. State will provide construction plans and cross-section information for the project.
 - c. State will write legal descriptions and prepare right of way maps.
 - d. Agency will specify the degree of title to be acquired (e.g., fee, easement).
3. Real Property and Title Insurance:
 - a. State will provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
 - b. Agency will determine sufficiency of title (taking subject to).

c. State will conduct Level 1 testing for presence of hazardous material.

State will conduct reasonable testing up to Level 2, if requested.

If contamination is found, a recommendation for remediation will be presented to Agency.

4. Appraisal:

a. State will conduct the valuation process of properties to be acquired.

b. State will recommend just compensation, based upon a review of the valuation by qualified personnel.

c. Property trades, construction obligations, and zoning or permit concessions are to be evaluated as part of the Just compensation offer.

5. Negotiations:

a. State will tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Conveyances taken for more than the approved figure will be documented by an Administrative Justification for the increase in compensation. If State performs this function; it will provide the Agency with all pertinent letters, negotiation records and obligations incurred during the acquisition process.

b. Agency and State shall jointly determine a date for certification of right of way. State agrees to file all Recommendations for Condemnation at least 70 days prior to that date if negotiations have not been successful on those properties.

6. Relocation:

a. State will perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the project.

b. State will make all relocation and moving payments for the project.

c. State will perform the relocation appeal process.

C. Closing Phase

1. State will close all transactions. This includes drawing deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If Agency is handling the closing, State will submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.
2. Agency will record conveyance documents, only upon acceptance by appropriate agency.

D. Property Management

1. Agency will take possession of all the acquired properties.
2. Agency will dispose of all improvements and excess land.

E. Condemnation

1. State *may* offer mediation if parties have reached an impasse.
2. State will perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. State will perform all legal work related to the condemnation process. (If State is doing this for another agency, the Department of Justice must approve in advance).
4. State will perform all litigation work related to condemnation. (If State is doing this for another agency, the Department of Justice must approve in advance).

**EXHIBIT B
(Local Agency or State Agency)
CONTRACTOR CERTIFICATION**

:usrlpa-formAgr-ex b-c3 (10-01-99)

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 C
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 terms 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 23 or as may be amended (49 CFR 23), 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 Oregon Department of Transportation (Department) that Disadvantaged Business Enterprises as defined in 49 CFR 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements of 49 CFR 23 apply to this contract.

DBE Obligations. Contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 23 have the maximum 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 23 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federally assisted contracts.

The DBE Policy Statement 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 DBE's 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 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.

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.