

AGREEMENT
CONGESTION MITIGATION AND AIR QUALITY PROGRAM
Compressed Natural Gas Infrastructure Program -Private
Project Name

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and the _____, acting by and through its _____, hereinafter referred to as "Recipient," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. In September 2013, the Oregon Transportation Commission (OTC) approved the Compressed Natural Gas (CNG) Infrastructure Program, and the allocation of \$4,000,000 in Congestion Mitigation Air Quality Program funds. The primary purpose of this funding is to reduce transportation-related emission reductions and to encourage the use of natural gas as a transportation fuel by supporting the installation of natural gas fueling stations.

NOW THEREFORE, the Parties agree as follows:

TERMS OF AGREEMENT

1. State and Recipient agree to Recipient's purchase and installation of _____, hereinafter referred to as "Project." The location of the Project is as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof. The location map must include a legal description of the property and the physical address where the property will be located.. The scope, schedule, progress report requirements, and Project Change Request process are described in Exhibit B, attached hereto and by this reference made a part hereof. Recipient agrees to the conditions set forth in Exhibit B.
2. This Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The total Project cost is estimated at \$ _____, which is subject to change. The CMAQ funds (Grant Funds) are limited to \$ _____, with Recipient providing a fifty (50) percent match and non-participating costs, including all costs in excess of the available federal funds. Recipient shall be responsible for any portion of the Project that is not covered by federal funding. All Grant Funds must be expended within 36 months of the final obligation date by the Federal Highway Administration for the Project. State will notify Recipient of the final obligation date established by the Federal Highway Administration. If Grant funds will not be expended within this timeframe, Recipient must submit a Project Change Request following the instructions in this Agreement.
3. Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any

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agency of the State of Oregon or the United States of America or any other party, organization or individual.

4. State will submit the requests for Federal funding to FHWA. The federal funding for this Project is contingent upon approval of each funding request by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and not eligible for reimbursement with Grant Funds.
5. State considers Recipient a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction.
6. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or five (5) calendar years following the date all required signatures are obtained, whichever is sooner.

RECIPIENT OBLIGATIONS

1. Recipient shall perform the Project described in Exhibit B.
2. Recipient shall submit to State's Contact for review and approval monthly invoices and updated monthly progress reports on Project Key Milestones and Schedule in accordance with Exhibit B. Invoices must identify Project name, Agreement number, Project start and end date, invoice number, and itemize all expenses. In the event an invoice is not necessary in any month, an updated monthly progress report on Project schedule must be submitted separately each month reflecting continuous progress.
3. All employers, including Recipient, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its contractors complies with these requirements.
4. Recipient shall, at its own expense, maintain and operate Project upon completion and throughout the useful life of Project at a minimum level that is consistent with normal depreciation or service demand or both. State and Recipient agree that the useful life of Project is ten (10) years. Recipient has, by submitting its application for these funds, represented and certified that it has sufficient funds and is able to operate and maintain Project. Recipient agrees to require any successor owner of the Project property to comply with this requirement. Failure to comply with this requirement may be remedied by Recipient or its successor in interest by performing, operating and maintaining the Project in accordance with the Agreement

or (b) repayment of expended Grant Funds. In the event repayment of expended funds is required, the repayment amount that must be paid to the State will be determined using the Straight Line Depreciation (SLD) method. The SLD is calculated by taking the grant amount divided by ten (10) years. State may conduct site reviews of the Project throughout the useful life of the Project. This paragraph shall survive any expiration or termination of this Agreement.

5. Recipient shall, upon execution of this Agreement and as a condition to this Agreement, complete and file with the appropriate County Clerk, "Memorandum of Agreement and Acknowledgment of ODOT Assistance", substantially in the form of Exhibit E attached hereto and by this reference made a part hereof. Recipient shall provide confirmation of this filing by forwarding to State's CMAQ Program Manager a notarized copy of the recorded Memorandum of Agreement and Acknowledgment of State Assistance. By means of said acknowledgment of Recipient's financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation or demand or both is recognized and attached to the property as conditions. Any interest in said property by State is proportional to the state funding participation in Project. While in default of conditions of this Agreement, Recipient will be ineligible to receive state funds from any State-administered program for any project on a street, road or property. The Memorandum of Agreement and Acknowledgment of State Assistance shall remain in place for the 10-year useful life of Project. State acknowledges that such interest shall not be deemed a lien, mortgage, deed of trust or other security instrument or interest granted by Recipient for security purposes. Reimbursement to Recipient will not be made until the Recipient receives a letter from State's CMAQ Program Manager indicating that the conformed copy of the Memorandum of Agreement and Acknowledgement of Assistance has been received.
6. Recipient acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Recipient which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years after final payment or after resolution of any disputes under this Agreement. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
7. Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under the Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; (v)

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all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, (vi) Buy America (23 CFR 635.410), current International Building Code, ASME, SAE, I-Codes, FNPA52, and all applicable State, Federal and local jurisdictional building, electric, and fire laws and codes. Recipient shall, obtain all required permits. Recipient shall conduct required test and inspections and provide any required personnel training in the operation and use of CNG fueling stations, in accordance with all applicable state, federal or local jurisdictional codes and laws.

8. Recipient agrees that any sale of CNG that results from the work performed under this Agreement shall be in conformance with ORS Chapter 319.
9. Recipient certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Recipient, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Recipient.
10. Recipient's Project Manager for this Project is (insert title, address phone number and e-mail address), or assigned designee upon individual's absence. Recipient shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. In consideration for the services performed, State agrees to pay Recipient's approved invoices within forty-five (45) days of receipt by State of Project invoices submitted in accordance with Recipient Obligations, Section 2. Total payment on all invoices shall not exceed a maximum amount of \$. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall not be reimbursed.
2. Each disbursement by State under this Agreement is contingent on State having received funding, appropriations, limitations or other expenditure authority to enable State, in the exercise of its reasonable administrative discretion, to make the disbursement. State's Contact for this Project is (insert title, address phone number and e-mail address), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Recipient, or at such later date as may be established by State, under any of the following conditions:

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- a. If Recipient fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Recipient 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 from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Recipient fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. 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 State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 4. RECIPIENT SHALL INDEMNIFY AND DEFEND ODOT AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ARISING OUT OF, OR RELATING TO THE INTENTIONAL MISCONDUCT, OR RECKLESS OR NEGLIGENT ACTS OR OMISSIONS OF RECIPIENT OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT.
 5. ODOT shall reasonably cooperate in good faith, at Recipient's reasonable expense, in the defense of a covered claim. Recipient shall select counsel reasonably acceptable to the Oregon Attorney General to defend such claim and all costs of such counsel shall be borne by Recipient. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before such counsel may act in the name of, or represent the interests of, ODOT, its officers, employees or agents. ODOT may elect to assume its own defense with an attorney of its own choice and its own expense at any time ODOT determines important governmental interests are at stake. ODOT agrees to promptly provide Recipient with notice of any claim that may result in an indemnification obligation hereunder. Subject to the limitations noted above, Recipient may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of ODOT, which consent shall not be unreasonably withheld, conditioned or delayed.

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6. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
7. Exhibits C and D are attached hereto and by this reference made a part of this Agreement.
8. Recipient, as a recipient of federal funds pursuant to this Agreement with the State, shall assume sole liability for Recipient's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Recipient's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Recipient, 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.
9. 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.
10. 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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

, by and through its
By _____
Title _____
Date _____
By _____
Title _____
Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Recipient Counsel
Date _____

Recipient Contact:

Name/Title
Address
Phone
Email

State Contact:

Name/Title
Address
Phone
Email

STATE OF OREGON, by and through
its Department of Transportation

By _____
Date _____

APPROVAL RECOMMENDED

By _____
CMAQ Program Manager
Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General (If over
\$150,000)
Date _____

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EXHIBIT A – Project Location Map

EXHIBIT B
Project Cost Estimate, Progress Reports and Project Change Request Process

Agreement No.

Key Number:

Project Name:

1. Project Description

This Project is subject to progress reporting and project change process as stated below.

- 2. Monthly Progress Reports (MPR)** Recipient shall submit monthly progress reports by the 5th day of each month to State's Contact, starting the first month after execution of this Agreement and continuing through the first month after State issues Project Acceptance for the Project. The monthly progress reports shall be on MPR Form 734-2923, which is incorporated by reference into this Agreement. The fillable MPR form and instructions are available at http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx
- 3. Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

Table 1: Project Milestones

	Milestone Description	Completion Date
1		
2		
3		
4	Project Completion (non-construction projects)	

4. **Project Change Request (PCR) Process** - Recipient must obtain approval from State's Contact for changes to the Project's scope or schedule as specified in paragraphs below.
 - a. **Reimbursement** - No reimbursement of Grant Funds will be made for costs incurred as a result of a change in Project Scope or schedule unless such change is pursuant to an approved PCR and any Amendment to this Agreement required by the PCR.
 - b. **Scope** - A PCR is required for any change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).
 - c. **Schedule**— A PCR is required if Recipient or State's Contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
5. **PCR Form** - Recipient must submit all change requests using PCR Form 734-2924 and incorporated by reference and made a part of this Agreement. A PCR Form shall be submitted to State's Contact no later than thirty (30) days after Recipient becomes aware of a need for change. The PCR shall explain the change being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion of State's Region Management or the State's CMAQ Program Manager. Recipient shall not proceed with any changes to *Project scope* prior to the PCR being approved by State and the ensuing amendment executed. The form is available at: http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx
6. **Consequence for Non-Performance** - If Recipient fails to fulfill its obligations in paragraphs No. 3 through No. 6 above, or does not assist in advancing the Project or perform tasks that the Recipient is responsible for under the Project Milestones, State may (a) restrict consideration of Recipient for future funds awarded through State managed funding programs, (b) withdraw unused Grant Funds, and (c) terminate this Agreement as stated in Terms of Agreement, Paragraphs No. 2a and 2b of this Agreement or take such other action as State determines appropriate.

**SE ONLY IF FEDERAL FUNDS INVOLVED AND PROJECT IS NON-CONSTRUCTION
RELATED**

For purposes of Exhibits C and D, references to Department shall mean STATE, references to Contractor shall mean Recipient, and references to Contract shall mean Agreement.

EXHIBIT C (Recipient 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 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 D
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

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

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

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

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

EXCEPTIONS:

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

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

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

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when

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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

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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.

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- 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

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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,

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the DBE requirements of 49 CFR 26 apply to this Contract.

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

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

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

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE

participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

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

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

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

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

VII. LOBBYING

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

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

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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

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

Agreement Number:

Project Name:

Key Number:

Agreement No. _____ between the *(Insert Recipient Name)* and the State of Oregon, Department of Transportation was executed on _____. Pursuant to paragraph _____, Agency Obligations, page _____ of the Agreement, upon the recording of this document, the *(Insert Agency Name)* received federal funds for the Project described in the Agreement. The property and assets under the jurisdiction of the *(Insert Recipient Name)* were improved with the assistance from the United States Government. Such assistance was provided to *(Insert Recipient Name)*, in reimbursement of costs associated with the *(Insert Recipient Name)*. The use and disposition of said property is subject to the terms of the above noted Agreement, copies of which may be obtained from the Director of ODOT and is also subject to 49 CFR Part 18. A description of the improved property is attached.
(Insert Recipient Name)

By: _____ (Notary Stamp)
(Name of person)

Title: _____

State of Oregon: County of _____

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

_____ My commission expires on _____.

STATE OF OREGON, DEPARTMENT OF TRANSPORTATION

By: _____ (Notary Stamp)

Title: Active Transportation Section Manager

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

_____ My commission expires on _____.

Oregon Department of Transportation; 555 13th St. NE, Suite 2; Salem, OR 97301-4178