

## **INTERGOVERNMENTAL AGREEMENT**

### **Code Assistance for the City of Ashland Unified Development Code Phase 2**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation (“ODOT” or “Agency”), and City of Ashland (“City”).

### **RECITALS**

1. The Transportation and Growth Management (“TGM”) Program is a joint program of ODOT and the Oregon Department of Land Conservation and Development.

2. The TGM Program includes a program of community assistance for local governments to assist with better integration of transportation and land use planning and development of new ways to manage growth in order to achieve compact pedestrian, bicycle, and transit friendly urban development.

3. This TGM Project (as defined below) is financed with federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”) funds. State funds that are paid under this Agreement to the Consultant (as defined below) are used as match for SAFETEA-LU funds.

4. By authority granted in ORS 190.110, state agencies may enter into agreements with units of local government or other state agencies to perform any functions and activities that the parties to the agreement or their officers or agents have the duty or authority to perform.

5. ODOT intends to enter into a PSK (as defined below) with a Consultant (as defined below) for the Project that benefits the City, and as a condition to entering into this PSK and making the Consultant's Amount available, ODOT requires the City to execute and agree to the terms of this Agreement

6. The parties desire to enter into this Agreement for their mutual benefit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **SECTION 1. DEFINITIONS**

Unless the context requires otherwise, the following terms, when used in this Agreement, shall have the meanings assigned to them below:

A. “City's Project Manager” means the individual designated by City as its project manager for the Project.

B. “Consultant” means the personal services contractor(s) hired by ODOT to do the tasks indicated in Exhibit A as being the responsibility of such contractor(s).

C. “Consultant’s Amount” means the Amount payable by ODOT to the Consultant for the deliverables described in Exhibit A for which the Consultant is responsible.

D. “Direct Project Costs” means those costs which are directly associated with the Project. These may include the salaries and benefits of personnel assigned to the Project and the cost of supplies, postage, travel, and printing. General administrative costs, capital costs, and overhead are not Direct Project Costs. Any jurisdiction or metropolitan planning organization that has federally approved indirect cost plans may treat such indirect costs as Direct Project Costs.

E. “Federally Eligible Costs” means those costs which are Direct Project Costs of the type listed in Exhibit D incurred by Consultant during the term of this Agreement.

F. “ODOT’s Contract Administrator” means the individual designated by ODOT to be its contract administrator for this Agreement.

G. “PSK” means the personal services contract(s) executed between ODOT and the Consultant related to the portion of the Project that is the responsibility of the Consultant.

H. “Project” means the project described in Exhibit A.

I. “Termination Date” has the meaning set forth in Section 2.A below.

J. “Work Product” has the meaning set forth in Section 4.I below.

## **SECTION 2. TERMS OF AGREEMENT**

A. Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been received. This Agreement terminates on June 30, 2013 (“Termination Date”).

B. Consultant’s Amount. The Consultant’s Amount shall not exceed \$46,500 and is disbursed as provided under the PSK.

### **SECTION 3. CITY'S REPRESENTATIONS, WARRANTIES, AND CERTIFICATION**

A. City represents and warrants to ODOT as follows:

1. It is a municipality duly organized and existing under the laws of the State of Oregon.

2. It has full legal right and authority to execute and deliver this Agreement and to observe and perform its duties, obligations, covenants and agreements hereunder and to undertake and complete the Project.

3. All official action required to be taken to authorize this Agreement has been taken, adopted and authorized in accordance with applicable state law and the organizational documents of City.

4. This Agreement has been executed and delivered by an authorized officer(s) of City and constitutes the legal, valid and binding obligation of City enforceable against it in accordance with its terms.

5. The authorization, execution and delivery of this Agreement by City, the observation and performance of its duties, obligations, covenants and agreements hereunder, and the undertaking and completion of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over it or its property or violate or breach any provision of any agreement, instrument or indenture by which City or its property is bound.

6. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of City.

B. As federal funds are involved in this Project, City, by execution of this Agreement, makes the certifications set forth in Exhibits B and C.

### **SECTION 4. GENERAL COVENANTS OF CITY**

A. City shall complete the Project; provided, however, that City shall not be liable for the quality or completion of that part of the Project which Exhibit A describes as the responsibility of the Consultant.

B. City shall, in a good and workmanlike manner, perform the work, and provide the deliverables, for which City is identified in Exhibit A as being responsible.

C. City shall perform such work identified in Exhibit A as City's responsibility as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform such work. City shall also be responsible for providing for employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.

D. All employers, including City, 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. City shall ensure that each of its contractors complies with these requirements.

E. City shall not enter into any subcontracts to accomplish any of the work described in Exhibit A, unless it first obtains written approval from ODOT.

F. City agrees to cooperate with ODOT's Contract Administrator. At the request of ODOT's Contract Administrator, City agrees to:

- (1) Meet with the ODOT's Contract Administrator; and
- (2) Form a project steering committee (which shall include ODOT's Contract Administrator) to oversee the Project.

G. City shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code. Without limiting the generality of the foregoing, City expressly agrees to comply with: (1) Title VI of Civil Rights Act of 1964; (2) Title V and Section 504 of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990 and ORS 659A.142; (4) all regulations and administrative rules established pursuant to the foregoing laws; and (5) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

H. City shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City shall maintain any other records pertinent to this Agreement in such a manner as to clearly

document City's performance. City acknowledges and agrees that ODOT, the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of City that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts.

City shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

I. To the extent it has any rights in the Work Product granted to it pursuant to the PSK, ODOT hereby grants to City a royalty free, non-exclusive license to reproduce any Work Product for distribution upon request to members of the public.

## **SECTION 5. CONSULTANT**

ODOT shall enter into a PSK with the Consultant to accomplish the work described in Exhibit A as being the responsibility of the Consultant.

- A. Selection of the Consultant will be conducted by ODOT in accordance with ODOT procedures with the participation;
- B. ODOT will review and approve Consultant's work, billings and progress reports;
- C. City will appoint a Project Manager to be City's principal contact person for ODOT's Contract Administrator and the Consultant on all matters dealing with the Project.

## **SECTION 6. ODOT'S REPRESENTATIONS AND COVENANTS**

- A. ODOT certifies that, at the time this Agreement is executed, sufficient funds are authorized and available for expenditure to finance ODOT's portion of this Agreement within the appropriation or limitation of its current biennial budget.
- B. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of ODOT.

C. ODOT will assign a Contract Administrator for this Agreement who will be ODOT's principal contact person regarding administration of this Agreement, the monitoring of the Consultant's work, and the review and approval of the Consultant's work, billings and progress reports.

D. ODOT shall enter into a PSK with the Consultant to perform the work described in Exhibit A designated as being the responsibility of the Consultant, and in such a case ODOT agrees to pay the Consultant in accordance with the terms of the PSK up to the Consultant's Amount.

## **SECTION 7. TERMINATION**

This Agreement may be terminated by mutual written consent of all parties. ODOT may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by ODOT under, but not limited to, any of the following conditions:

A. City fails to complete work specified in Exhibit A within the time specified in Exhibit A, or fails to perform any of the provisions of this Agreement and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

B. Consultant fails to complete work specified in Exhibit A within the time specified in this Agreement or the PSK, including any extensions thereof, and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

C. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement or the PSK is prohibited or ODOT is prohibited from paying for such work from the planned funding source.

D. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement or the PSK.

In the case of termination pursuant to A, B, C or D above, ODOT shall have any remedy at law or in equity. Any termination of this Agreement shall not prejudice any right or obligations accrued to the parties prior to termination.

## **SECTION 8. GENERAL PROVISIONS**

A. Time is of the essence of this Agreement.

B. Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to ODOT or City at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed is in effect five (5) days after the date postmarked. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

C. ODOT and City are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons (including but not limited to any Consultant) unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

D. Sections 4(H), 4(I), and 8 of this Agreement and any other provision which by its terms is intended to survive termination of this Agreement shall survive.

E. The parties agree as follows:

(a) Contribution.

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Grantee ("Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which ODOT is jointly liable with the Grantee (or would be if joined in the Third Party Claim ), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

With respect to a Third Party Claim for which the Grantee is jointly liable with ODOT (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

(b) Choice of Law; Designation of Forum; Federal Forum.

(1) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(2) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(3) c) Notwithstanding Section 8.E (b)(2), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 8.E(b)(3c) applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of



Oregon to be sued in federal court. This Section 8.E(b)(3c) is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

(c) Alternative Dispute Resolution.

The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the 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.

F. This Agreement and attached Exhibits (which are by this reference incorporated herein) 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 modification or change of terms of this Agreement shall bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Budget modifications and adjustments from the work described in Exhibit A must be processed as an amendment(s) to this Agreement and the PSK. No waiver or consent shall be effective unless in writing and signed by the party against whom such waiver or consent is asserted. 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.

G. 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.

On December 1, 2010 the Director of the Oregon Department of Transportation approved DIR-06, in which authority is delegated from the Director of the Oregon Department of Transportation to the Operations Deputy Director and Transportation Development Division Administrator, to approve agreements with local governments, other state agencies, federal governments, state governments, other countries, and tribes as described in ORS 190 developed in consultation with the Chief Procurement Officer.

**City**

*City of Ashland*

By: \_\_\_\_\_  
(Official's Signature)

\_\_\_\_\_  
(Printed Name and Title of Official)

Date: \_\_\_\_\_

**ODOT**

STATE OF OREGON, by and through  
its Department of Transportation

By: \_\_\_\_\_  
Jerri Bohard, Division Administrator  
Transportation Development Division

Date: \_\_\_\_\_

**Contact Names:**

Maria Harris  
City of Ashland  
City Hall, 20 East Main Street  
Ashland, OR 97520-1849  
Phone: 5415522045  
Fax: 541-488-5311  
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Bill Holmstrom, Contract Administrator  
Transportation and Growth Management Program  
635 Capitol Street NE, Suite 150  
Salem, OR 97301  
Phone: 503-373-0050 Ext 265  
Fax: 503-378-5518  
E-Mail: bill.holmstrom@state.or.us

## STATEMENT OF WORK

Oregon Transportation and Growth Management Program (TGM)  
Smart Development Code Assistance Project for the City of Ashland  
**Ashland Unified Development Code – Phase 2**

### A. PROJECT MANAGEMENT TEAM (“PMT”)

<b>Consultant – Siegel Planning Services</b> Scot Siegel 16067 SW Boones Ferry Road Lake Oswego, OR 97035	scot@siegelplanning.com 503-699-5850
<b>City of Ashland</b> Maria Harris, Planning Manager Department of Community Development 20 E Main Street Ashland, OR 97520	harrism@ashland.or.us 541-552-2045
<b>Agency – TGM Code Assistance Program</b> Bill Holmstrom, Project Manager Oregon Department of Land Conservation & Development 635 Capitol Street NE, Suite 150 Salem, OR 97301	bill.holmstrom@state.or.us 503-373-0050 Ext. 265
<b>ODOT Regional Planner</b> John McDonald Oregon Department of Transportation 3500 NW Stewart Parkway Roseburg, OR 97470	john.mcdonald@odot.state.or.us 541-957-3688
<b>DLCD Regional Representative</b> Josh LeBombard Oregon Department of Land Conservation & Development 673 Market Street Medford, OR 97504	josh.lebombard@state.or.us 541-414-7932

### B. PROJECT BACKGROUND AND OBJECTIVES

#### Background

The City of Ashland Land Use Ordinance (ALUO) has been incrementally amended numerous times since it was originally adopted in 1964. Each update was prepared and adopted independently. Many of these updates were part of projects to plan for compact, transportation-efficient development. Some of these projects were funded by TGM.

There are now several documents that comprise the City's land use regulations and standards. As a result, today's collection of development regulations present obstacles to smart development as they are often confusing, difficult to navigate, repetitious, and inconsistent.

The City of Ashland is undertaking a project to combine the ALUO and related development standards into a Unified Land Use Code with improved organization, wording, formatting and graphics. The focus of the project is reorganizing the existing development standards into one user-friendly document that will remove existing barriers to transportation-efficient development. The project will also include an evaluation of the planning application process and green development measures, and preparation of code amendment options in these areas consistent with TGM objectives.

This project was initiated by the City of Ashland and the first phase of this work (Phase 1) was funded by the City. Phase 1 is currently being completed. The City has requested TGM Code Assistance to complete the second phase of the project.

### **Project Objectives**

1. Draft an updated development code that includes all parts of the City's development standards in one consistent document to remove impediments to smart development.
2. Include updated standards to be consistent with the City's goals and TGM objectives in the areas of procedures, economic development, sustainability, and green development.
3. Engage the community in a meaningful public process in order to gain their input and use the results to edit and refine the code update.
4. Guide the resulting updated code through the Adoption process.

### **Purpose of Contract - Transportation Relationships and Benefits**

The TGM Program is a joint effort of the Oregon Department of Transportation (ODOT) and the Oregon Department of Land Conservation and Development (DLCD). The purposes of TGM are to strengthen the capability of local governments to effectively manage growth and comply with the Transportation Planning Rule, to integrate transportation and land use planning, and to encourage transportation-efficient land uses that support modal choice and the efficient performance of transportation facilities and services.

This project will meet TGM objectives by removing barriers in the development code to the implementation of compact, mixed-use, transportation-efficient development patterns. The project will use work completed in previous TGM projects and ensure consistent implementation throughout the City.

## **C. GENERAL PROVISIONS**

### **Project Management**

Project management tasks are integrated into each of the tasks in this Work Order Contract (WOC), but are described here to establish a framework for managing the project. A Project Management Team (PMT), comprised of a City Project Manager, Agency Project Manager, and Consultant shall provide overall guidance for the project. PMT shall meet as specified within individual tasks to coordinate logistics of the project and to give feedback to Consultant. PMT shall meet by telephone conference; the duration of each meeting shall not exceed two hours.

City shall lead Planning Commission Work Sessions and Public Hearings as described in this SOW. City shall provide all necessary public notices and notifications.

Consultant shall provide materials to PMT for review and comment at least 14 working days prior to the scheduled distribution of a deliverable to City, unless Agency Project Manager agrees to a different length of time. Consultant shall provide meeting materials to City Project Manager for photocopying and distribution, and to Agency Contract Administrator, at least seven calendar days prior to the relevant meeting date unless agreed to differently by PMT.

This statement of work describes the responsibilities of all entities involved in this cooperative project.

The work order contract (for the purposes of the quoted language below the “WOC”) with the work order consultant (“Consultant”) shall contain the following provisions in substantially the form set forth below:

#### **“Project Cooperation**

This statement of work describes the responsibilities of the entities involved in this cooperative Project. In this WOC, the Consultant shall only be responsible for those deliverables assigned to the Consultant. All work assigned to other entities are not Consultant’s obligations under this WOC, but shall be obtained by Agency through separate intergovernmental agreements which contain a statement of work that is the same as or similar to this statement of work. The obligations of entities in this statement of work other than the Consultant are merely stated for informational purposes and are in no way binding, nor are the named entities parties to this WOC. Any tasks or deliverables assigned to a subcontractor shall be construed as being the responsibility of the Consultant.

Any Consultant tasks or deliverables which are contingent upon receiving information, resources, assistance, or cooperation in any way from another entity as described in this statement of work shall be subject to the following guidelines:

1. At the first sign of non-cooperation, the Consultant shall provide written notice (email acceptable) to Oregon Department of Transportation (Agency) Project Manager of any deliverables that may be delayed due to lack of cooperation by other entities referenced in this statement of work.
2. Agency Project Manager shall contact the non-cooperative entity or entities to discuss the matter and attempt to correct the problem and expedite items determined to be delaying the Consultant.

If Consultant has followed the notification process described in item 1, and Agency finds that delinquency of any deliverable is a result of the failure of other referenced entities to provide information, resources, assistance, or cooperation, as described in this statement of work, the Consultant will not be found in breach of contract; nor shall Consultant be assessed or liable for any damages arising as a result of such delinquencies. Neither shall ODOT be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. Agency Project Manager will negotiate with Consultant in the best interest of the State, and may amend the delivery schedule to allow for delinquencies beyond the control of the Consultant.”

Consultant shall ensure that any work products produced pursuant to this WOC include the following statement:

*This project is partially funded by a grant from the Transportation and Growth Management (TGM) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), local government, and the State of Oregon funds.*

*The contents of this document do not necessarily reflect views or policies of the State of Oregon.*

## **Key Personnel**

Consultant acknowledges and agrees that Agency selected Consultant, and is entering into this WOC, because of the special qualifications of Consultant's key people. In particular, Agency through this WOC is engaging the expertise, experience, judgment, and personal attention of Scot Siegel ("Key Personnel"). Consultant's Key Personnel shall not delegate performance of the management powers and responsibilities. Key Personnel is required to provide under this WOC to another (other) Consultant employee(s) without first obtaining the written consent of Agency.

Further, Consultant shall not re-assign or transfer the Key Personnel to other duties or positions such that the Key Personnel is no longer available to provide Agency with Key Personnel's expertise, experience, judgment, and personal attentions, without first obtaining Agency's prior written consent to such re-assignment or transfer. In the event Consultant requests that Agency approve a re-assignment or transfer of the Key Personnel, Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Personnel. Any approved substitute or replacement for Key Personnel shall be deemed Key Personnel under this WOC.

## **Public Involvement Approach**

Public involvement must allow residents and business owners an opportunity to provide input into the planning process. Consultant and City shall consider environmental justice issues, which is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Fair treatment means that no group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies. Meaningful involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.

The public involvement program must include specific steps to provide opportunities for participation by federal Title VI communities. City shall utilize the ODOT Title VI (1964 Civil Rights Act) Plan guidance to identify Title VI populations, formulate public involvement strategies, and report outreach efforts to and participation by Title VI communities.

## **D. WORK TASKS AND DELIVERABLES**

### **Task 1: Draft #2 Code Amendments and Graphics**

The purpose of Task 1 is to prepare Development Code Draft #2 for Planning Commission review. Phase 1 funded by the City included the development of an initial Development Code Draft. Draft Amendments in this draft were divided into three modules. Module 1 of Draft #2 was completed in Phase 1.

- 1.1 Consultant shall convene PMT Meeting #1 via teleconference. PMT will review work previously completed in Phase 1 of the project, including Development Code Module 1 Draft #2. PMT will review upcoming tasks. Consultant shall prepare and distribute Notes summarizing PMT Meeting #1.

- 1.2 Consultant shall produce Development Code Module 2 Draft #2 using the results of Phase 1. Consultant shall prepare a cover memo summarizing the module, comparing existing code requirements to proposed changes and highlighting key policy issues. Consultant shall meet with City by telephone to prepare for Planning Commission review. City shall present Development Code Module 2 Draft #2 to Planning Commission for review.
- 1.3 Consultant shall produce Development Code Module 3 Draft #2 using the results of Phase 1. Consultant shall prepare a cover memo summarizing the module, comparing existing code requirements to proposed changes and highlighting key policy issues. Consultant shall meet with City by telephone to prepare for Planning Commission review. City shall present Development Code Module 3 Draft #2 to Planning Commission for review.
- 1.4 Consultant shall review all definitions in the existing development code and Development Code Modules 1, 2, and 3 Draft #2 to prepare Development Code Definitions.
- 1.5 Consultant shall use work developed in Phase 1 and Development Code Modules 1, 2, and 3 Draft #2 to prepare Draft Code Graphics Package. Draft Code Graphics Package must include no fewer than 24 code graphics to be incorporated in an updated development code; code graphics must be a combination of Model Code graphics and up to 12 new graphics developed specifically for the City of Ashland in a consistent format with the Model Code graphics. Draft Code Graphics Package must be prepared to allow easy insertion into an update development code. Consultant shall distribute Draft Code Graphics Package to PMT for review and comment.
- 1.6 Consultant shall use comments received from PMT to revise Draft Code Graphics Package to prepare Code Graphics Package.

*Task 1 Consultant Deliverables:*

- 1.1 PMT Meeting #1
- 1.2 Development Code Module 2 Draft #2
- 1.3 Development Code Module 3 Draft #2
- 1.4 Development Code Definitions
- 1.5 Draft Code Graphics Package
- 1.6 Code Graphics Package

*Task 1 City Deliverables:*

- 1.1 PMT Meeting #1
- 1.2 Present Development Code Module 2 Draft #2 to Planning Commission
- 1.3 Present Development Code Module 3 Draft #2 to Planning Commission
- 1.5 Review Draft Code Graphics Package

**Task 2: Procedures and Green Building Code Evaluation**

The purpose of Task 2 is to evaluate existing code provisions for consistency with City Council Goals related to Economic Development and Sustainability (Green Building) best practices, to review code amendment options with local officials, and to prepare a detailed outline and action plan for preparing related code amendments.

- 2.1 Consultant shall convene PMT Meeting #2 via teleconference. PMT will review Development Code Draft #2 Modules 1, 2, and 3; Development Code Definitions; and Code Graphics Package. PMT will review upcoming tasks. Consultant shall prepare and distribute Notes summarizing PMT Meeting #2.

- 2.2 Consultant shall prepare Draft Procedures Evaluation Memo evaluating Ashland's current land use procedures and recommending updates for consistency with Council Goals related to economic development. Consultant shall include sample implementing code text that would be required in an updated development code. Draft Procedures Evaluation Memo must be in summary form and not exceed 8 pages of text, excluding sample code text. Consultant shall distribute Draft Procedures Evaluation Memo to PMT for written comment.
- 2.3 Consultant shall prepare Draft Green Building Evaluation Memo evaluating Ashland's current Site Design and Use Standards and recommending updates for consistency with sustainability (green building) best practices. Draft Green Building Evaluation Memo must include sample implementing code text that would be required in an updated development code. Draft Green Building Evaluation Memo must be in summary form and not exceed 8 pages of text, excluding sample code text. Consultant shall distribute Draft Green Building Evaluation Memo to PMT for written comment.
- 2.4 Consultant shall convene PMT Meeting #3 via teleconference. PMT will review Draft Procedures Evaluation Memo and Draft Green Building Evaluation Memo. PMT will review upcoming tasks. Consultant shall prepare and distribute Notes summarizing PMT Meeting #3.
- 2.5 Consultant shall use feedback received from PMT to revise Draft Procedures Evaluation Memo to produce Evaluation Procedures Memo. Consultant shall meet with City by telephone to prepare for Planning Commission review. City shall present Procedures Evaluation Memo to Planning Commission for review. City shall summarize Planning Commission feedback and distribute to PMT.
- 2.6 Consultant shall use feedback received from PMT to revise Draft Green Building Evaluation Memo to produce Green Building Evaluation Memo. Consultant shall meet with City by telephone to prepare for Planning Commission review. City shall present Green Building Evaluation Memo to Planning Commission for review. City shall summarize Planning Commission feedback and distribute to PMT.
- 2.7 Consultant shall use Procedures Evaluation Memo, Green Building Evaluation Memo, and input received from Planning Commission to prepare Evaluation Action Plan including revised evaluation memos and an outline and action plan for related code amendments. Consultant shall include sample implementing code text that would be required in an updated development code. Consultant shall distribute Evaluation Action Plan to PMT for review.

*Task 2 Consultant Deliverables:*

- 2.1 PMT Meeting #2
- 2.2 Draft Procedures Evaluation Memo
- 2.3 Draft Green Building Evaluation Memo
- 2.4 PMT Meeting #3
- 2.5 Evaluation Procedures Memo
- 2.6 Green Building Evaluation Memo
- 2.7 Evaluation Action Plan

*Task 2 City Deliverables:*

- 2.1 PMT Meeting #2
- 2.2 Comment on Draft Procedures Evaluation Memo
- 2.3 Comment on Draft Green Building Evaluation Memo
- 2.4 PMT Meeting #3
- 2.5 Present Evaluation Procedures Memo to Planning Commission
- 2.6 Present Green Building Evaluation Memo to Planning Commission
- 2.7 Review Evaluation Action Plan



### **Task 3: Development Code Draft #3 and Adoption**

The purpose of Task 3 is to prepare a final draft of the Development Code consolidating all of the previous work including Development Code Modules 1, 2, and 3 Draft #2, Development Code Definitions, Code Graphics Package, and Evaluation Action Plan. Draft #3 must incorporate City comments from previous tasks, and must be suitable for public hearings (adoption-ready).

- 3.1 City shall use Development Code Modules 1, 2, and 3 Draft #2, Development Code Definitions, Code Graphics Package, and Evaluation Action Plan to prepare City Comments containing one set of consolidated and reconciled comments and direction to Consultant to use in the development of Development Code Draft #3. City shall distribute City Comments to PMT.
- 3.2 Consultant shall convene PMT Meeting #4 via teleconference. PMT will review work previously completed in Task 2, City Comments, and review upcoming tasks. Consultant shall prepare and distribute Notes summarizing PMT Meeting #4.
- 3.3 Consultant shall use City Comments and direction from PMT Meeting #4 to prepare Development Code Draft #3. Development Code Draft #3 must incorporate Development Code Modules 1, 2, and 3 Draft #2, Development Code Definitions, Code Graphics Package, and Evaluation Action Plan.
- 3.4 City shall prepare for Adoption, including finalizing code amendments, legislative findings, legal review, final formatting, publication, preparation of ordinance for adoption, and public notices and hearings. Consultant shall meet with City by telephone to prepare for the first Planning Commission hearing on the Development Code. Consultant shall assist City by preparing sample findings, with a cover memorandum not to exceed 2 pages.

#### *Task 3 Consultant Deliverables:*

- 3.2 PMT Meeting #4
- 3.3 Development Code Draft #3
- 3.4 Adoption Findings and Assistance

#### *Task 3 City Deliverables:*

- 3.1 City Comments
- 3.2 PMT Meeting #4
- 3.4 Adoption

**E. LUMP SUM PER DELIVERABLE AND PROJECT SCHEDULE**

<b>TASK</b>	<b>CONSULTANT DELIVERABLES</b>	<b>LUMP SUM PER DELIVERABLE AMOUNT</b>	<b>COMPLETION</b>
<b>Task 1: Draft #2 Code Amendments and Graphics</b>			
1.1	PMT Meeting #1	\$500	September 2012
1.2	Development Code Module 2 Draft #2	\$6,500	October
1.3	Development Code Module 3 Draft #2	\$6,500	November
1.4	Development Code Definitions	\$5,300	November
1.5	Draft Code Graphics Package	\$6,200	November
1.6	Code Graphics Package	\$2,000	December
<b>Task 2: Procedures and Green Building Code Evaluation</b>			
2.1	PMT Meeting #2	\$500	December
2.2	Draft Procedures Evaluation Memo	\$2,500	December
2.3	Draft Green Building Evaluation Memo	\$2,700	December
2.4	PMT Meeting #3	\$500	January 2013
2.5	Procedures Evaluation Memo	\$900	February
2.6	Green Building Evaluation Memo	\$900	March
2.7	Evaluation Action Plan	\$1,600	April
<b>Task 3: Development Code Draft #3 and Adoption</b>			
3.2	PMT Meeting #4	\$500	April
3.3	Development Code Draft #3	\$8,500	May
3.4	Adoption Findings & Assistance	\$900	June
<b>PROJECT TOTAL</b>		<b>\$46,500</b>	

**EXHIBIT B (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.

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**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;  | 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; |
| 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 | 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.