

Misc. Contracts and Agreements  
No. 26218

**INTERGOVERNMENTAL AGREEMENT**  
**I-5 Right of Way Access**  
**Willamalane Park & Recreation District's Whilamut Natural Area of Alton Baker Park**  
**Facility Enhancements and Maintenance**

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 Willamalane Park and Recreation District, acting by and through its Board of Directors, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), state agencies may enter into agreements with units of local governments or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have authority to perform.
2. Agency owns and operates the Eastgate Woodlands, which lies east of and within State's Interstate five (I-5) right of way, within the city limits of Springfield, Oregon, and which is Agency's portion of the Whilamut Natural Area (WNA) of Alton Baker Park, located along the north side of the Willamette River.
3. Agency has maintenance responsibility for its portion of the WNA, including multiple-use paths and a soft-surface trail, known as Pre's Trail, and landscaping features located within Agency's portion of WNA and Eastgate Woodlands boundaries and across State right of way.
4. The City of Eugene owns and operates the portion of WNA of Alton Baker Park that lies west of and within State's I-5 right of way, within the city limits of Eugene, Oregon. City of Eugene has responsibility for the Canoe Canal, multiple-use paths, soft-surface trail, known as Pre's Trail, and landscaping features within its portion of WNA boundaries.
5. State has jurisdiction of the I-5 right of way, which passes through Agency and City of Eugene portions of the WNA, including the Canoe Canal structure, landscaping features, multiple-use paths, and soft-surface trail cross.
6. The Willamette River Bridge (WRB) 06875 (North Walnut Road underpass) and Canoe Canal Bridge 06875A (Canoe Canal underpass) on I-5 will be replaced as part of the OTIA III Bridge Program.
7. The work under this Agreement is a result of State's Willamette River Bridge Bundle 220 (WRB 220) project that constructed design enhancements and reconstructed portions of the Canoe Canal structure, multi-use paths, soft-surface trail and landscaping features within Agency's portion of WNA and within State Interstate 5 (I-5) right of way.

8. This Agreement, between State and Agency provides for the maintenance of multiple-use paths, soft-surface trail, landscaping features and design enhancements within Agency's portion of WNA and across State I-5 right of way.

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

## **TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to the maintenance and operations of the Canoe Canal structure, multiple-use paths, soft-surface trail, landscaping features and design enhancements of the Whilamut Natural Area of Alton Baker Park (WNA) within Lane County. Said maintenance and operations are hereinafter referred to as "Project." The Project and Parties' responsibilities are further described in Exhibit A, Statement of Work, attached hereto and by this reference made a part hereof. The Parties are also addressing potential future design enhancements in Exhibit B, constituting a non-binding Memorandum of Understanding for responsibilities for such future design enhancements, attached hereto and by this reference made a part hereof. The location of the Project is approximately as shown on the area of responsibility diagrams attached hereto, marked Attachment 1 – Canoe Canal Underpass Area of Responsibility (for Willamalane Park & Recreation District/State) and by this reference made a part hereof.
2. The Project will be financed at a Not-to-Exceed (NTE) cost of \$100,000 in *state and federal* funds. State, Agency and the City of Eugene will determine subsequent to execution of this Agreement and Agreement #26219, pursuant to the procedures set forth in Exhibit B, future areas of responsibility, and the distribution of the one-time lump-sum payment, NTE \$100,000 for the purpose of maintenance of such design enhancement features. When determined, an amendment to this Agreement and Agreement #26219 will be executed to formalize the distribution of funds.
3. The estimate for the total Project cost is subject to change. Agency shall be responsible for any nonparticipating costs, and Project costs beyond the estimate.
4. This Agreement may be modified by mutual consent of both Parties and upon execution of amendments to this Agreement stating said modifications.
5. The term of this Agreement shall become effective on the date all required signatures are obtained and shall remain in effect indefinitely for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of State's WRB 220 project. The useful life is defined as twenty (20) calendar years. This Agreement expires on June 30 of the 20<sup>th</sup> year following the Effective Date; however, unless the Agreement is terminated by exercise of General Provision, paragraph #1 by notice at least thirty (30) days prior to the termination date, it is automatically renewed for a subsequent twenty (20) year term (the "Renewal Term").

6. The Parties agree to the conditions set forth in Exhibit A.

### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in the "AGENCY OBLIGATIONS" section of Exhibit A.
2. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
3. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform work under this agreement, including but not limited to retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State hereby consents to Agency's use of qualified subcontractors.
5. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
6. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
7. If Agency enters into a maintenance contract for performance of work within State right of way as part of the Project, then Agency will require its contractor to provide the following:

- a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
  - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
  - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 2,000,000.
  - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
  - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
  - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
8. Agency represents that at the time this Agreement is written sufficient funds are currently available and authorized for Agency to fulfill its obligations under this Agreement. If at any time Agency does not have sufficient funds available and authorized to fulfill its obligations under this Agreement, Agency will use its best efforts to obtain such funds, but Agency's ability to continue to fulfill its obligations in the future under this Agreement is dependent upon Agency continuing to have

sufficient funds or receiving sufficient appropriations and limitations or other funds and expenditure authority.

9. All employers, including Agency and its subcontractors, 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. Agency shall ensure that each of its subcontractors complies with these requirements.
10. Agency acknowledges and agrees that State, the Oregon Secretary of State's office and the federal government and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the Agreement for the purpose of making audit examination, excerpts and transcripts for a period of six (6) years after final payment (or completion of Project – if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
11. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the 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; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
12. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
13. Agency's Project Manager during the design and construction phase of State's WRB 220 project is Greg Hyde, Planning and Development Manager, Willamalane Park and Recreation District, 250 South 32nd Street, Springfield, OR 97478, Telephone (541) 736-4544, [GregH@willamalane.org](mailto:GregH@willamalane.org), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
14. Agency's Project Manager (once the design and construction phases of State's WRB 220 project are completed) for the duration of this Agreement is Joel Miller, Park Services Director, 250 South 32nd Street, Springfield, OR 97478, Telephone (541) 736-4544, [joelm@willamalane.org](mailto:joelm@willamalane.org), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## STATE OBLIGATIONS

1. State and Agency will determine subsequent to execution of this Agreement and Agreement #26219, pursuant to the procedures set forth in Exhibit B, future design enhancement areas of responsibility, and the distribution of the one-time lump-sum payment, NTE \$100,000, for the purpose of maintenance of such design enhancement features. When determined, an amendment will be executed for this Agreement and #26219 to formalize that distribution of funds.
2. In consideration for Agency's performance of maintenance and operation work under this Agreement for the portion of the Project that is within State's right of way and designated areas in Agency's portion of WNA utilizing Statewide Transportation Improvement Program (STIP), federal-aid funding approved for Key No. 14259, and Transportation Enhancement funds approved for this Project, State agrees to pay Agency within forty-five (45) days of receipt by State of the lump sum invoice, with the maximum amount, to be determined as described in Exhibit B. Said maximum amount shall include the to be determined one-time lump-sum reimbursement for maintenance of design enhancements.
3. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
4. State shall be responsible for operation and maintenance of the Project areas that are on State's right of way, as listed under "STATE OBLIGATIONS" section of Exhibit A.
5. If at any time State does not have sufficient funds available and authorized to fulfill its obligations under this Agreement, State will use its best efforts to obtain such funds, but State's ability to continue to fulfill its obligations in the future under this Agreement is dependent upon State continuing to have sufficient funds or receiving sufficient appropriations and limitations or other funds and expenditure authority.
6. State grants authority to Agency to enter onto State I-5 right of way for the purpose of performing Agency's maintenance and operation work under this Agreement.
7. State will allow public access to the WNA portion that crosses State's I-5 right of way for recreation and non-motorized transportation.
8. State's Project Manager during the design and construction phases of State's WRB 220 project is Russell Swearingen, Senior Contract Specialist, ODOT - Major Projects Branch, 680 Cottage Street NE, Salem, Oregon, 97301, (503) 986-6639, Email: [Russell.SWEARINGEN@odot.state.or.us](mailto:Russell.SWEARINGEN@odot.state.or.us), 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.

9. State's Project Manager (once the design and construction phases of State's WRB 220 project are completed) for the duration of this Agreement is David Warren, District 5 Manager, ODOT Region 2, 644 A St, Springfield, Oregon 97477-4609, Telephone (541) 744-8080, David.WARREN@odot.state.or.us, 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 either party upon 30 days' notice, in writing and delivered by certified mail or in person.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency 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 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.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or 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. This Agreement is subject to the provisions of the Single Audit Act of 1984 (49 CFR, Part 90) as stated in Circular A-128 of the United States Office of Management and Budget.
5. Indemnification.
  - a. To the extent permitted by Article XI, Section 7 and Section 10 of the Oregon Constitution and by the Oregon Tort Claims Act, each Party shall indemnify, within the limits of the Tort Claims Act, the other Party against liability for damage

to life or property arising from the indemnifying Party's own activities under this Agreement, provided that a Party will not be required to indemnify the other Party for any such liability arising out of the wrongful acts of employees or agents of that other Party.

- b. Notwithstanding the foregoing defense obligations under paragraph 1 above, neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party or any agency/department/division of such other party, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each party may, at any time at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that other party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so. Each party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense
6. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State 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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 State on the one hand and of Agency 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. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
  7. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State 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 Agency on the one hand and of State 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. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.



8. 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.
9. State and Agency 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 general public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
10. As federal funds are involved in this Agreement, Exhibits C and D are attached hereto and by this reference made a part hereof, and are hereby certified to by Agency representative.
11. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency'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 Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. 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.
13. This Agreement and Attachments 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.

**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.

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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.

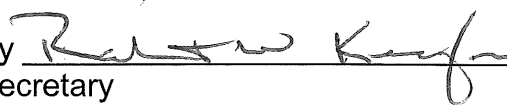
**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2010-2013 Statewide Transportation Improvement Program, Key #14259 that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

**WILLAMALANE PARK AND RECREATION DISTRICT**, by and through its Board of Directors

By   
President

Date 11 Nov 2012

By   
Secretary

Date 11/14/12

**Agency Contact:**

Joel Miller, Willamalane Park & Recreation District, Park Services Director  
250 South 32nd Street, Springfield, OR 97478, Phone: (541) 736-4544  
Email: [joelm@willamalane.org](mailto:joelm@willamalane.org)

**State Contact:**

David Warren, ODOT, Highway Division, Region 2, District 5 Manager  
644 A St, Springfield, Oregon 97477-4609  
Phone: (541) 744-8080.  
Email: [David.WARREN@odot.state.or.us](mailto:David.WARREN@odot.state.or.us)

**STATE OF OREGON**, by and through its Department of Transportation

By \_\_\_\_\_  
Thomas Lauer, PE, Major Project Branch Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Sonny Chickering, PE, Region 2 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
David Warren, District 5 Manager

Date \_\_\_\_\_

**APPROVED FOR LEGAL SUFFICIENCY**

By Kathryn Lincoln  
Assistant Attorney General

Date "By e-mail dated 8/14/2012"

## **EXHIBIT A – STATEMENT OF WORK**

### **PROJECT DESCRIPTION**

1. The work to be performed under this Agreement will be conducted through State and Agency and shall provide for continual operations and maintenance of Agency portions of the above mentioned multiple-use paths, soft-surface trail, landscaping features and design enhancements within State's right of way located at the North Walnut Road underpass and Canoe Canal underpass.
2. Operation and maintenance costs related to the portions of the multiple-use paths, soft-surface trail, design enhancements and landscaping features that lie within State's right of way at the Canoe Canal underpass are the responsibility of the Agency to the extent specified herein.
3. State will provide Agency a one-time lump-sum payment for maintenance of design enhancements placed within Agency's area of responsibility.

### **AGENCY OBLIGATIONS:**

1. Agency and City of Eugene have agreed to split maintenance responsibilities for the WNA areas that cross State right of way located at the North Walnut Road underpass and the Canoe Canal underpass locations as described below:
  - a. Agency shall be responsible for operating and maintaining the Project area which generally encompasses WNA area under the I-5 Canoe Canal underpass, south of the Canoe Canal concrete structure within State's eastern and western right of way boundaries, between the southern Canoe Canal retaining wall and the southern abutment of the Canoe Canal Bridge.
  - b. State and City of Eugene have entered into Agreement No. 26219 to identify City of Eugene responsibilities. City of Eugene shall be responsible for operating and maintaining the project area which generally encompasses WNA area under the North Walnut Road underpass area, within State's eastern and western right of way boundaries. City of Eugene shall also be responsible for routine maintenance of the Canoe Canal concrete structure. City of Eugene's responsibilities shall be stated in Agreement No. 26219 between City of Eugene and State.
3. Agency shall be responsible for operation and maintenance for the Project area outlined in Attachment 1, which generally encompasses WNA area under the I-5 Canoe Canal Bridge, south of the Canoe Canal concrete structure, including multiple-use path and soft-surface trail surfaces and shoulders, slope paving, retaining wall surfaces (excluding the Canoe Canal structure walls), railings, landscaping features and any design enhancements accepted by the Agency and located within State's I-5 eastern and western right of way boundaries, between the

southern Canoe Canal retaining wall and the southern abutment of the Canoe Canal Bridge, as outlined in Attachment 1.

- a. This work and other future enhancement work to Agency facilities within State's right of way shall occur as Agency deems necessary, subject to the following conditions:
  - i. Agency shall use their normal standards and practices to perform the work described in this subsection and shall perform all such work in compliance with all applicable federal, state and local laws and regulations, including City of Springfield regulations.
  - ii. Agency shall perform all such work in accordance with the goals, objectives and guidelines outlined in applicable land use plans and the East Alton Baker Park Plan.
  - iii. No modifications to the normal standards and practices for work referenced in this section of the agreement will be allowed without prior coordination between Agency and State project managers and final approval by State.
  - iv. Agency services under this Agreement shall be performed on WNA areas as outlined in this Agreement.
  - v. Agency shall promptly communicate with the State's Contract Administrator or designee any change Agency wishes to make to any services outlined in this Agreement.
  - vi. Agency hereby grants State the authority to enter onto Agency's portion of WNA as required for State to access the adjacent I-5 State Highway facilities located within State right of way for maintenance. Significant or ongoing access requirements by State that may impact use of Agency portions of WNA, Canoe Canal, multiple-use paths and soft-surface trail by the public, shall be negotiated between State and Agency prior to need.
4. Agency shall not utilize State right of way area, including the eastern slope area of I-5 for the propose of creating new WNA facilities, enhancements and/or recreational facilities, without State's prior written approval and will not encourage public use of State right of way outside the existing WNA boundaries.
5. Agency's maintenance and repair activities include, but are not limited to; repairs to path and trail surfaces and shoulders, and to any design enhancements accepted by the Agency, landscaping, sweeping, mowing, and removal and control of brush, hazardous or invasive weeds and debris, litter and graffiti.
6. Agency shall assume plant and tree management, maintenance and monitoring responsibilities for their areas of responsibility described in this Agreement after

State has fulfilled its plant and tree restoration and monitoring obligations under the terms specified in Exhibit B of Agreement No. 25114.

7. Maintenance and repair of any design enhancements will be agreed upon during negotiations, as outlined in Exhibit B of this Agreement.
8. Agency's Park Rules shall apply and may be enforced within Agency's area, including areas within State right of way.
9. Agency may enforce its park rules, including rules against camping within Agency's area of responsibility and within State right of way.
10. Agency agrees that any future improvements/modifications Agency desires to make to the newly reconstructed and/or constructed Canoe Canal, multiple-use paths, soft-surface trail and landscaping features that fall within State's right of way must be previously approved, in writing, by State.
11. Agency shall be responsible for securing funding for any additional Agency initiated improvements/modifications to Agency's area of responsibility described in this Agreement that are not considered a part of the Project and shall be paid for at Agency's expense.
12. Agency agrees that any maintenance costs for reconstructed and/or constructed multiple-use paths, soft-surface trail and landscaping features within Agency's area of responsibility shall be paid by Agency, including portions that are located within State right of way as outlined in this Agreement.

## **STATE OBLIGATIONS**

1. State hereby grants authority to Agency, and authorizes the public to access and enter onto State right of way for the purpose of recreational and non-motorized transportation use of, or travel on, Agency's portions of WNA, Canoe Canal, multiple-use paths, soft-surface trail, landscaping features and design enhancements. State authorizes Agency to make State right of way available to the public for the purposes of assisting Agency in its maintenance responsibilities as part of an official Agency sanctioned volunteer activity within WNA boundaries. Areas within State right of way outside the existing WNA boundaries shall not be open to the public.
2. State shall be responsible for operation and maintenance of the I-5 related highway system including but not limited to: WRB and Patterson Slough Bridge (a.k.a., Canoe Canal Bridge) structures, retaining walls, piers, bents, abutments, slope paving and culverts, right of way and security fencing, roadways, embankments, and trees, grasses, shrubs, and plants within State's right of way, except for Agency areas of responsibility as set forth in the Agency Obligations section of this Agreement. State will be responsible for maintenance for the following areas as

described below. State areas of responsibility will be maintained in accordance with State highway maintenance and safety standards.

3. In accordance with the terms specified in Exhibit B of executed Agreement No. 25114, State or designee, will restore, maintain and monitor disturbed areas covered under this Agreement.
4. State will maintain and repair I-5 Canoe Canal Bridge structure and components, design enhancements, slope paving and abutments, bents, I-5 roadway, shoulders, standard protective railing, right of way fencing and retaining wall structures within its area of responsibility and slope paving between northern Canoe Canal retaining wall and northern I-5 bridge abutment. State's area of responsibility is shown in Attachment 1.
  - a. State will be responsible for remedying design and reconstruction flaws affecting structural integrity of the Canoe Canal concrete structure for a three (3) year period after reconstruction of the canal is completed.
5. State will coordinate with local law enforcement concerning illegal camping and perform clean up of illegal camping waste within State right of way. State will cooperate with Agency and local law enforcement to enforce Agency Park Rules, including removal of illegal camping within State right of way.

## EXHIBIT B

### Memorandum of Understanding Concerning Design Enhancements

This non-binding Memorandum of Understanding outlines the approach to be utilized by the Parties in determining ownership, responsibilities and one-time lump-sum maintenance payment amount for future design enhancements.

1. At a point in the future, the local Eugene-Springfield community may recommend specific WRB 220 project design enhancements. Some of these recommendations may be included into the area for which Agency shall be responsible to maintain. Specific details on final design and acceptance of the design enhancements are not known at this time; it is therefore difficult to define the actual design and construction materials and how they might be cared for. This MOU provision addresses the general approach that will be used to define each Party's responsibilities, and is enumerated below, but shall be non-binding until this Agreement is amended to specifically address such responsibilities.
2. Once design enhancement designs are completed and are accepted by both Parties the following will be negotiated by the Parties and added to this Agreement by amendment:
  - a. Policy outlining expectations on expected life span, maintenance and repair effort, and removal and/or disposal of design enhancements once they are deemed physically or organically deteriorated or damaged beyond repair and maintenance fund requirements and Not-to-Exceed (NTE) State funding obligations outlined in this Agreement.
  - b. Specific areas of responsibility including, but not limited to:
3. **Agency area of responsibility and obligations for design enhancements:**
  - a. Design enhancements maintained by Agency or a designee that is mutually agreed upon by both Parties.
  - b. Legal title/Ownership.
  - c. Provide comments on:
    - i. Design and Construction
    - ii. Long term care expectations
    - iii. Maintenance and repair expectations and schedule
    - iv. Life expectancy

- d. Provide long term care, maintenance and repair, and replacement and/or disposal of accepted design enhancements.
- e. If Agency is unable to maintain a particular design enhancement or commences maintenance and then determines it is unable to continue, Agency may solicit public support to provide needed maintenance or repairs. If public support cannot be garnered to provide maintenance and/or repairs of a particular design enhancement Agency may remove the design enhancement from the State right of way upon notice of intended removal and State acceptance of removal schedule.
- f. Agency may choose to accept ownership and management and maintenance responsibilities of one or more of the design enhancements but is under no obligation to do so.
- g. The following apply if Agency chooses not to accept ownership and the management and maintenance responsibilities for one or more of the design enhancements within their area of responsibility
  - i. Design enhancement(s) will not be constructed by the State unless State agrees to accept ownership and responsibility for long term maintenance and management.
  - ii. State may only accept ownership and maintenance and management responsibilities for design enhancements placed within State right of way.

**4. State area of responsibility and obligations for design enhancements:**

- a. Provide comments on:
  - i. Design and Construction
  - ii. Long term care expectations
  - iii. Maintenance and repair expectations and schedule
  - iv. Life expectancy
  - v. Replacement and/or disposal expectations
- b. Pay for design enhancement construction costs as designated in State's final WRB 220 project design enhancement plans, specifications, and estimates.
- c. State will not proceed with construction of design enhancements under State's WRB 220 project unless this Agreement has been amended to include negotiated areas of responsibilities.



- d. State will not proceed with construction of any design enhancement under State's WRB 220 project unless one of the Parties has accepted ownership and/or maintenance and management responsibilities for the design enhancement(s).
- e. State may only accept ownership, maintenance, replacement and disposal responsibilities for design enhancements placed within State right of way, outside of Agency's area of responsibility.
- f. Provide Agency a one-time lump-sum payment to offset long-term care and maintenance costs for design enhancement(s) for which Agency has accepted maintenance and management responsibility.
- g. A Not-to-Exceed (NTE) amount for the State's one-time lump-sum payment for maintenance to the Agency accepting ownership of and/or maintenance and management responsibility for design enhancements will be agreed upon by the Parties during negotiations. The lump-sum amount for maintenance will be based on ten (10) percent of the value of design enhancements placed in the Agency's area of responsibility.
- h. State limits its total financial obligation for its combined one-time lump-sum payment to Agency and City of Eugene for maintenance of design enhancements to a maximum NTE amount of \$100,000.

**EXHIBIT C  
AGENCY CERTIFICATION**

Agency certifies by signing this Agreement that Agency 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 Agency) to solicit or secure this Agreement,
- (b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement, 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 Agency), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Agreement, except as here expressly stated (if any):

Agency 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.

**STATE OFFICIAL CERTIFICATION**

State official likewise certifies by signing this Agreement that Agency 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 Agreement 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):

State 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.

Agency/State  
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***EXHIBIT D***  
Federal Provisions  
Oregon Department of Transportation  
CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

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

Agency/State  
Agreement No. 26218

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

voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

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

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

- Appendix B of 49 CFR Part 29 -

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

##### Instructions for Certification

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

Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a

participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

**IV. EMPLOYMENT**

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

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

V. NONDISCRIMINATION

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

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
  - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

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

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 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, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING  
DEPARTMENT'S DBE  
PROGRAM REQUIREMENT  
CONTACT OFFICE OF CIVIL  
RIGHTS AT (503)986-4354.

**Attachment 1: Canoe Canal Underpass Area of Responsibility (Willamalane Park & Recreation District/State)**

Agreement No. 26218 Attachment 1: Canoe Canal Underpass Area of Responsibility (Willamalane Park & Recreation District/State)

