

EXHIBIT C

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PROVISIONS

As a condition of federal funding, the following programs are administered by the Oregon Department of Transportation (ODOT) Office of Equity and Civil Rights (OECR): Disadvantaged Business Enterprise (DBE), Equal Employment Opportunity (EEO), On-Site Workforce Affirmative Action (OSWAA), and Reimbursable Federal OJT Apprenticeship Training (OJT). As such, ODOT has developed the DBE, EEO, OSWAA and OJT supplemental contract provisions set forth in this Exhibit C.

As a subrecipient of federal funds through ODOT, Agency sets forth and will enforce and monitor Contractor's compliance with the applicable DBE, EEO, OSWAA and OJT provisions. Contractor shall in good faith cooperate with Agency, and ODOT as necessary, to comply and ensure compliance with the applicable DBE, EEO, OSWAA and OJT requirements.

EXHIBIT C-1
FHWA 1273 (Revised July 5, 2022)
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

EXHIBIT C-2

ON-SITE WORKFORCE AFFIRMATIVE ACTION REQUIREMENTS FOR WOMEN AND MINORITIES ON FEDERAL-AID CONTRACTS

Pursuant to 41 CFR 60-4.6 (see also 41 CFR 60-4.2(a)) the following notice concerning Affirmative Action Requirements for Women and Minorities shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the United States Department of Labor (USDOL) Director. The USDOL, Office of Federal Contract Compliance Programs (OFCCP) has made the following statement concerning Goals, Timetables and Good Faith Efforts:

"Numerical goals are established based on the availability of qualified applicants in the job market or qualified candidates in the employer's work force. Executive Order [E.O. 11246] numerical goals do not create set-asides for specific groups, nor are they designed to achieve proportional representation or equal results. Rather, the goalsetting process in affirmative action planning is used to target and measure the effectiveness of affirmative action efforts to eradicate and prevent discrimination. The Executive Order and its supporting regulations do not authorize OFCCP to penalize contractors for not meeting goals. The regulations at 41 CFR 60-2.12(e), 60-2.30 and 60-2.15, specifically prohibit quota and preferential hiring and promotions under the guise of affirmative action numerical goals. In other words, discrimination in the selection decision is prohibited."

For purposes of these "On-Site Workforce Affirmative Action Requirements for Women and Minorities on Federal-Aid Contracts", "Good Faith Effort" means affirmative action measures designed to implement the established objectives of an Affirmative Action Plan 23 CFR 230.407(o).

A. AFFIRMATIVE ACTION REQUIREMENTS

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

1. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goal and Timetable for Female Utilization Statewide

Timetable	Goal (Percent)
From Apr. 1, 1980 until further notice	6.9

Goals for Minority Utilization by County

Goal (Percent)

Clackamas, Multnomah, and Washington Counties	4.5
Marion and Polk Counties	2.9
Benton, Clatsop, Columbia, Crook, Deschutes, Hood River, Jefferson, Lincoln, Linn, Sherman, Tillamook, Wasco, and Yamhill Counties	3.8
Lane, Coos, Curry, Douglas, Jackson, Josephine, Klamath, and Lake Counties	2.4
Baker, Gilliam, Grant, Morrow, Umatilla, Union, Wallowa, and Wheeler Counties	3.6
Harney and Malheur Counties.....	4.4

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

2. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 business days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

3. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the county or counties shown in the Solicitation Documents. In cases where the work is two or more counties covered by different percentage goals, the highest percentage will govern.

B. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

- a. "Covered area" means the geographical area, described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian American and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$2,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation, and which is set forth in the solicitation from which this contract resulted.

3. A contractor participating, either individually or through an association, in an approved Hometown Plan (including heavy highway affirmative action plans) shall comply with its affirmative action obligations under Executive Order 11246 by complying with its obligations under the plan; provided, that each contractor or subcontractor participating in an approved plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60-1.4; to make a good faith effort to achieve the goals for each trade participating in the plan in which it has employees; and that the overall good performance

by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the plan's goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minorities and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minorities and female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or a community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the Contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the

acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female employees for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and Contractor's activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor-community; or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor will designate an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so. Additionally, the contractor EEO Officer shall ensure that the company EEO policy is being carried out, to submit reports relating to the specifications hereof as may be required by the Agency and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws, which establish different standards of compliance, or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. The Office of Federal Contract Compliance Programs (OFCCP) may conduct compliance evaluations to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

EXHIBIT C-3

EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

As used in these provisions, "Engineer" means the Chief Engineer of the Agency acting either directly or through authorized representatives. "Good Faith Efforts" means "affirmative action measures designed to implement the established objectives of an Affirmative Action Plan" 23 CFR 230.407(o).

Section 140 of Title 23, United States Code, EQUAL EMPLOYMENT OPPORTUNITY, as in effect on May 1, 1982, is incorporated by this reference and made a part of these provisions.

Written Notification

The Contractor shall provide to the Engineer within two weeks of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation written notification with the following information: the name, address and telephone number of the Subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

The Contractor shall provide immediate written notification to the Engineer when (1) the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor minorities or women that the Contractor sent to the union, or (2) the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its equal opportunity obligations. This is in addition to the notification required in item 7d in the "On-Site Workforce Affirmative Action Requirements for Women and Minorities on Federal-Aid Contracts".

Monthly Report

The Contractor and each Subcontractor (on contracts that require certified payrolls) shall submit each month to the Engineer a "Monthly Employment Utilization Report" (Form 731-0668). The electronic form is available at:

<https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>

Annual Report

Each July for the duration of the Project, each Contractor and Subcontractor shall submit Form FHWA-1391. This report shall be sent directly to the ODOT Office of Equity and Civil Rights.

PURSUANT TO 23 CFR PART 230, SUBPART D, THE STATE HIGHWAY AGENCY HAS A RESPONSIBILITY TO ASSURE COMPLIANCE BY CONTRACTORS WITH THE REQUIREMENTS OF FEDERAL-AID CONSTRUCTION CONTRACTS, 23 CFR 230.405(b). THEREFORE, THE STATE HIGHWAY AGENCY HAS THE FOLLOWING OBLIGATIONS CONCERNING MONITORING AND COMPLIANCE, INCLUDING SHOW CAUSE NOTICE REQUIREMENTS.

Monitoring and Compliance

The Agency will maintain a vigorous monitoring process to ensure nondiscrimination and affirmative action on all federally funded Projects. Monitoring shall include at a minimum, monthly meetings to review the "Monthly Employment Utilization Report" (Form 731-0668) with the Contractor's Equal Employment Opportunity (EEO) Officer and quarterly reviews of the Contractor's Good Faith Efforts as outlined in FHWA 1273.

The Agency shall determine the Contractor's compliance with equal opportunity requirements including:

- Non-discrimination in selection and retention of Subcontractors, material suppliers and vendors;
- Maintenance of non-segregated facilities;
- Adequate representation and utilization of minorities and women (by craft and trade) in the Contractor's workforce;
- Good Faith Efforts in meeting on-the-job training and training special provisions contained in FHWA 1273;
- Fair treatment in all terms and conditions of employment; and,
- Adherence (where applicable) to Indian preference provisions.

If the Agency or the FHWA becomes aware of any possible violations of Executive Order 11246 or 41 CFR 60, each has the authority and the responsibility to notify the Office of Federal Contract Compliance Programs. The Contractor has the responsibility either to meet all the craft goals set forth in the applicable "Covered Area" of "On-Site Workforce Affirmative Action Requirements for Women and Minorities on Federal-Aid Contracts" or demonstrate Good Faith Efforts to meet these goals (as specified in paragraphs 7a through 7p of the "On-Site Workforce Affirmative Action Requirements for Women and Minorities on Federal-Aid Contracts").

Show Cause Notice

If an investigation or review reveals that a Contractor or Subcontractor has not complied with these EEO Provisions, the Agency shall issue a Show Cause Notice to initiate efforts to bring the Contractor or Subcontractor into compliance. This written notice shall state the deficiencies found during the review, and shall advise the Contractor or Subcontractor to show cause within 30 Calendar Days why the Agency shall not impose administrative sanctions. The Contractor or Subcontractor must then show good cause or must provide an acceptable agreement for corrective action within 30 Calendar.

If the Contractor or Subcontractor does not provide this information by the end of the 30 Calendar Days, the Engineer shall withhold all project progress payments in process as of the date the Show Cause Notice was issued and will continue to withhold project progress payments until the

Contractor or Subcontractor responds in an acceptable manner. If the Contractor or Subcontractor fails to meet the conditions of the corrective action agreement, no further Show Cause Notice is required; the Agency shall immediately initiate enforcement proceedings.

If a Contractor's prequalification certification is revoked or disqualified because the Contractor has been found on at least two occasions to be in breach of these EEO Provisions of Federal-Aid highway construction contracts, the Contractor must be determined to be in compliance with these EEO Provisions prior to the Contractor's prequalification certificate being reinstated.

EXHIBIT C-4

EQUAL EMPLOYMENT OPPORTUNITY-ASPIRATIONAL TARGET PROVISIONS

See the EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS incorporated in this Contract for notifying the Engineer, monthly and annual reporting, monitoring, and compliance.

Aspirational Diversity Targets

Aspirational Diversity Targets - While Aspirational Diversity Targets are not requirements for this Contract and are not binding on the Contractor, the Agency desires to encourage the highest possible participation of minorities and women in the work force. Therefore, the Agency has established aspirational targets on all federally funded Projects:

Covered Areas

Area	Aspirational
ODOT Region 1	Women 14% - Minority 25%

Neither the Contractor nor its Subcontractors are under any obligation to meet any aspirational targets.

EXHIBIT C-5
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SUPPLEMENTAL REQUIRED CONTRACT PROVISIONS

01.00 DBE Policy and Authorities:

(a) DBE Policy, Required Assurance, and Applicability - As required by 49 CFR Part 26, the Agency and the Contractor, in cooperation and coordination with the Oregon Department of Transportation (ODOT) agree to abide by and take all necessary and reasonable steps to comply with the policy set out below:

(1) 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 assisted contracts. Consequently, the Disadvantaged Business Enterprise (DBE) requirements of 49 CFR part 26 apply to this agreement.

(2) DBE Required Assurance - The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT-assisted 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 Agency deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(3) DBE Applicability - This applies to all public improvement projects financed in whole or in part with federal funds received from FHWA, FTA and FAA through ODOT. Agency and its Contractors shall conform to all applicable civil rights laws, orders, and regulations. Agency and its Contractors shall not discriminate on the basis of race, age, sex, color, religion, national origin, mental or physical disability, political affiliation, or marital status in the award and performance of Agency contracts.

(b) Authorities - These DBE Supplemental Required Contract Provisions are authorized by the following laws, rules, regulations and guidelines, which, in conjunction with any pertinent policy memoranda or procedures issued by the FHWA, all of which are incorporated by reference into the provisions, govern ODOT's administration of the DBE Program.

(1) The USDOT Regulations (49 CFR Part 26) published in the Federal Register, effective March 4, 1999, established a requirement that all recipients of USDOT funds establish a DBE Program. The regulations are applicable to both Federal-aid construction and non-construction activities.

(2) The USDOT's legal authority for its DBE regulations includes Executive Order 11625 (October 13, 1971), which required that federal executive agencies develop comprehensive plans and programs to encourage minority business **participation**.

USDOT requires ODOT to establish a DBE Program as a condition for receiving USDOT federal funds. As a subrecipient through ODOT, Agency agrees to follow ODOT's DBE Program and policy on its Federal-aid projects.

(3) Title VI, Civil Rights Act of 1964. This Act concerns non-discrimination in federally assisted programs or activities on the grounds of race, color, sex or national origin.

(4) The Program is also subject to the following laws: Section 30 of the Airport and Airway Development Act of 1970 and Section 520 of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety Capacity Expansion Act of 1987; Section 905 of the Railroad Act of 1978 (45 USC 903); and Section 19 of the Urban Mass Transportation Act of 1964, as amended (Public Law 95599).

(5) Oregon Revised Statutes, Chapters 200 and 279.

(6) Oregon Administrative Rules, Chapter 123, Division 200, Certification Procedures.

The Contractor agrees that these Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions (including all references) shall be incorporated into all subcontracts, regardless of tier, and into any agreements with Committed DBEs, regardless of form of agreement.

02.00 Abbreviations and Definitions - Abbreviations and definitions of words and phrases used in connection with the DBE Program are as follows (See also CM/GC General Provisions 00110.01 and 00110.20):

(a) Abbreviations:

COBID - State of Oregon Certification Office of Business Inclusion and Diversity, which is authorized to certify DBE firms according to federal regulations

DBE - Disadvantaged Business Enterprise

FAA - Federal Aviation Administration

FHWA - Federal Highway Administration

FTA - Federal Transit Administration

ODOT - Oregon Department of Transportation

USDOT - United States Department of Transportation

(b) Definitions:

Assigned DBE Contract Goal - An assigned numerical percentage value of the total dollar amount of a Contract Award that is allocated solely for DBE participation. For a DBE to count towards participation it must be certified by COBID under the commodity codes of the work it is contracted to perform.

Broker - A business firm that provides a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for the performance of the contract.

Certification Directory of DBEs - A publication (available in paper or Internet) listing all DBEs which are currently certified by the COBID. The Directory is provided to the Contractor for use in identifying DBE firms whose participation on a contract may be counted toward achievement of the assigned DBE contract goal.

Certified Disadvantaged Business Enterprise (DBE) - A business firm certified by the COBID, indicating that it:

- Meets the criteria outlined in 49 CFR part 26 regarding certification as a DBE; and
- Possesses the required resources and expertise to perform designated types of work.

Commercially Useful Function (CUF) - The definition is consistent with 49 CFR 26.55(c) and describes how DBE participation shall be counted towards DBE goals:

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

Committed DBE - A Committed DBE firm is one that was identified by the Contractor to meet an assigned DBE contract goal and includes any substitute DBE, approved by the Agency in accordance with 49 CFR 26.53(f) and Exhibit C-5 of the Disadvantaged Business Enterprise (DBE) Supplemental Required contract Provisions in Exhibit C-5, that has subsequently been committed work to meet the assigned DBE contract goal. A non-Committed DBE is one that was hired on a race- and gender-neutral basis and has not been identified as a substitute Committed DBE.

Commodity Codes - Codes assigned by the COBID to indicate the standard types of services, labor, materials, or work the DBE provides. Services and commodity codes reflect information provided by the certified DBE firms and are not used as prequalification factors by the Agency.

Contractor's Diversity Administrator - The individual designated by the Contractor to assist the Contractor in meeting the Contractor's responsibility of compliance with the legal requirements of the DBE program and with the contractual obligations imposed by these supplementary provisions including but not limited to assuring that the DBE Subcontractors on this project perform a commercially useful function.

DBE Eligibility - A firm is eligible to participate as a DBE if it meets the criteria as established by the federal DBE regulations in 49 CFR part 26 and enforced by the certifying agency, which in Oregon is COBID, applies these regulations to make certification decisions. A firm will no longer be able to participate as a DBE on current or future contracts when it receives notification of decertification, denial of recertification, or notice of graduation by the certifying agency.

Equipment - See CM/GC General Provisions 00110.20. **Federal-Aid Contract** - For the purposes of these Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions, any contract including consultant agreements or modifications of a contract between the Agency and a Contractor which is paid for in whole or in part with USDOT financial assistance from FHWA, FTA or FAA.

Good Faith Efforts - Efforts required to obtain and support DBE participation that could reasonably be expected to produce and maintain a level of DBE participation sufficient to meet the assigned DBE contract goal. Good faith efforts are required before Bid Opening, upon Contract Award, and continue throughout the performance of the contract to maximize DBE participation. See 49 CFR 26.53 and 49 CFR Part 26, Appendix A.

High Road Contractor - See CM/GC General Provisions 00110.20.

Joint Venture DBE - An ODOT certified enterprise consisting of one or more firms of which at least one is a certified DBE, formed to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest of the business. (see Section 8.00).

Managerial Control - Consistent with normal industry practice, management shall include scheduling work operations, ordering equipment and materials (if materials are part of the contract), preparing and submitting payrolls and all other required reports and forms, and hiring and firing employees, including supervisory employees.

Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

Operational Control - Consistent with normal industry practice, the DBE shall supervise the daily operations of the work contracted. There are only two acceptable ways for the DBE to supervise the daily operations. The DBE owner shall act as superintendent and directly supervise the work or the DBE owner shall supervise the work of and employ a skilled and knowledgeable superintendent. If the latter is used, the DBE owner shall be actively

involved in making the operational and managerial decisions of the firm; wherein the DBE owner can continue operations should the skilled and knowledgeable superintendent's employment be discontinued.

Regular Dealer - A DBE firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the DBE firm shall engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment. Any supplementing of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis, and such equipment shall be operated by the DBE's own employees. Brokers and packagers shall not be regarded as regular dealers within the meaning of this definition.

Subcontract - A subcontracting arrangement is generally considered to exist when a person or firm assumes an obligation to perform a part of the contract work and the following conditions are present:

- Compensation for performance of work is on a unit price or lump sum basis.
- The Subcontractor exercises full control and authority over the subcontracted work, including the furnishing of labor and equipment and choice of work methods, with only general supervision being exercised by the Contractor.
- Personnel involved in the operation are under the direct supervision of the Subcontractor and are included on the Subcontractor's payroll.
- The Agency has provided written consent to the subcontract arrangement, regardless of tier.

All conditions involved should be considered and no one condition alone will normally determine whether a subcontract actually exists. (See 00180.21.)

Subcontractor - See CM/GC General Provisions 00110.20

Type of Work - Specific descriptions of work which the DBE is certified in the Certification Directory of DBEs as having the expertise and resources necessary to perform.

03.00 Assigned DBE Contract Goal - For any project with an assigned DBE contract goal for DBE participation, the Contractor is required to select a portion of work available on the project for DBE participation. The Contractor may use DBE Subcontractors, suppliers, manufacturers or professional service providers to fulfill the assigned DBE contract goal as long as the DBE is certified in the types of work selected. The assigned DBE contract goal on a project remains in effect throughout the life of the contract. Dollar values of participation shall be credited toward meeting the assigned DBE contract goal based on DBE gross earnings.

According to 49 CFR 26.87(j)(2), if a Contractor has executed a subcontract with a firm before the Agency notifies the firm of its ineligibility, the Contractor may continue to use the firm on the contract and may continue to receive credit toward its assigned DBE contract goal for the firm's work. If the Agency awards the contract to a DBE prime Contractor that is later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the Agency issued the notice of ineligibility shall not count toward the Agency's overall goal, but may count toward the assigned DBE contract goal. There is an exception under 49 CFR 26.87(j)(3) if the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the Agency may continue to count its participation on the contract toward overall and assigned DBE contract goals.

In determining whether a DBE Contractor has met an assigned DBE contract goal, only the work the DBE has committed with its own forces as well as the work that it has committed to be performed by DBE Subcontractors and DBE suppliers will be counted.

According to 49 CFR 26.71(n), DBE firms are certified only for specific types of work. If a DBE firm has not been certified prior to Bid Opening, for the type of work it is intending to perform on a given contract, then the firm's participation on that contract cannot count toward assigned DBE contract or overall goals.

The assigned DBE contract goal for the project is listed on the "Assigned DBE Contract Goal" in Exhibit C-8.

04.00 Subcontracting Limitations:

(a) DBE Subcontractors - All DBE Subcontractors committed to perform a function or service as a condition of contract award, or for replacing the performance of a Committed DBE, shall perform a commercially useful function according to Section 09.00. If it is determined by the Agency that the DBE Subcontractor is unable to perform a commercially useful function, the Agency will notify the Contractor prior to subcontract approval. The Contractor shall either provide evidence that the DBE Subcontractor is able to perform a commercially useful function, or replace the DBE Subcontractor with another DBE who has been certified to perform the bid item subcontracted according to Section 10.00(c). If the Contractor cannot provide sufficient evidence that the DBE Subcontractor has the ability to perform a CUF, and/or refuses to replace the DBE, the Contractor may be declared in default and the contract could be terminated according to CM/GC 00180.90(a).

(b) Second Tier DBE Subcontracts - Second tier DBE subcontracts may be counted toward the Contractor's assigned DBE contract goal provided the subcontract was listed in the original DBE commitment prior to bid award. The proportion of participation or work performed by a second-tier DBE subcontract may not be double counted and may only be counted towards the DBE goal in accordance with 49 CFR Part 26.

05.00 DBE Subcontract, Sub-Subcontract(s), and Other Agreement Documents:

(a) Committed DBEs - All work committed to a DBE toward meeting an assigned DBE contract goal, including work to be performed by a substitute Committed DBE, shall be performed under a written agreement according to 00160.01 and 00180.21. The agreement shall fully describe any partial pay item work committed to be performed by DBE firms.

(b) Non-Committed DBEs - Work to be performed by a non-Committed DBE shall be in accordance with 00160.01, 00180.20, and 00180.21.

06.00 Good Faith Efforts Requirements - The Contractor is required to exercise good faith efforts during the entire life of the contract to meet the assigned DBE contract goal. Good faith efforts shall be made to secure DBE participation sufficient to meet the assigned DBE contract goal. The Contractor shall also make every reasonable effort during the course of the project to enable DBE firms to perform those portions of the contract work for which they have been committed.

If the Contractor determines that the committed DBE is unable or unwilling to perform under the subcontract, unable to perform a commercially useful function, or has changed its ownership and/or control, the Contractor shall make good faith efforts to replace with another DBE. Section 10.00 discusses the procedures that shall be followed to terminate a Committed DBE and replace the firm with a substitute.

The Engineer may request the Contractor to submit evidence of Good Faith Efforts at any time during the course of the contract and the Contractor shall promptly submit such evidence.

07.00 DBE Work Plan Proposal Form - The Contractor shall require each DBE participating on the project as a Subcontractor and each Committed DBE, regardless of work type or form of agreement, to complete the "Disadvantaged Business Enterprise Work Plan Proposal - Form 3A" (Form 734-2165A). The form shall be filled-in electronically, then printed, and signed by an authorized representative of the DBE and of the Contractor. The Contractor shall submit the completed form to the Engineer. Form 734-2165A is available on the ODOT Office of Equity and Civil Rights website at:

<https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>

For Committed DBEs, the Contractor shall submit the completed DBE Work Plan Proposals to the Engineer at or before the pre-construction conference. For non-Committed DBE Subcontractors, the Contractor shall submit the completed forms to the Engineer in time for review of the Contractor's request for consent to use the DBE Subcontractor on the project.

The purpose of the DBE Work Plan Proposal is to preview whether the proposed activities and type of work identified will comply with DBE program regulations, particularly with respect to commercially useful function and crediting rules. The Contractor shall ensure the form is completed with sufficient information about the DBE's intended work, personnel, equipment, materials, and performance to allow the Agency to determine whether the DBE's proposed performance will meet commercially useful function requirements. Additional information and

documentation may be requested by the Agency as needed to alleviate program compliance concerns and must be provided promptly according to 49 CFR 26.109.

The DBE Work Plan Proposal specifically solicits information regarding the following:

(a) Type of Work - List the types of work the DBE will perform.

(b) Personnel Required - List the names and/or craft classifications for personnel who will perform. Indicate whether the individual is regularly employed by the DBE, or the source from which the individual was or is to be recruited.

(c) Equipment Required - List the items of equipment that will be used on the project. Indicate whether the equipment is owned, rented or leased. If rented or leased, consent to the rental or lease shall be obtained from the Agency prior to beginning of the work.

(d) Supplies and Materials Required - List the supplies and materials that will be used on the project. Indicate the source, by name, address, and phone number, from which supplies and materials will be obtained. For a DBE supplier committed to meet an assigned DBE contract goal, attach documentation showing how the DBE meets manufacturer, regular dealer, or broker requirements, as applicable to the credit being claimed and provide any additional explanation needed regarding ordering, scheduling, and delivery according to subsection (f) below.

(e) Prime Contractor Resources - Discuss any plans for the DBE to share any resources of the Contractor, e.g., personnel, equipment, tools, or facilities.

(f) Additional Information - Provide comments or explanation of any of the information provided above. Include information related to joint check arrangements or any plans the DBE has to subcontract work to a lower tier or perform work through a specialty contractor.

The Engineer and Office of Equity and Civil Rights (OECR) Field Coordinator will review the proposals and may provide written comments as to whether the activities and type of work identified in the proposals complies with program regulations. In those instances where proposed activity and type of work violates applicable regulations, written comments will be offered as to corrective action required in order to comply with the regulations.

08.00 Contractor Pre-construction Conference Reporting - The Contractor shall deliver the following information to the Engineer at or before the Pre-construction Conference:

- The name of the Diversity Administrator who will administer the Contractor's DBE program. Said administrator or the administrator's designee shall attend the conference.
- Contractor's project schedule showing the work commencement date and estimated completion date for each DBE that will perform work on the project.
- "Disadvantaged Business Enterprise Work Plan Proposal - Form 3A" for all Committed DBEs that are performing work on the project regardless of contracting tier.

09.00 Commercially Useful Function - The Contractor is responsible for ensuring that DBE firms working on the project perform a commercially useful function (CUF). The Contractor shall receive credit toward meeting the assigned DBE contract goal and payment for DBE commercially useful function performed work only.

The Agency may perform an on-site review to ascertain whether the DBE is actively performing, managing, and supervising the work. All DBEs shall employ a labor force which is separate and apart from that employed by the Contractor, and which is independently recruited by the DBE according to standard industry practice. The DBE shall supervise and manage the work or independently hire a supervisor, who may not be a supervisor employed by the Contractor or any other Subcontractor on the project.

With regard to the Federal-aid share, if an investigation reveals that there has been a violation of the CUF provisions, that portion of the work found to be in violation would not be counted toward goal achievement for either the Contractor or the Agency.

When a DBE is presumed not to be performing a CUF as described in this section, the DBE may present evidence through the Contractor to the Agency to rebut that presumption.

(a) The DBE (Not Some Other Business Entity) Shall Actually Perform the Subcontract - The DBE's utilization of labor, supervisory personnel, equipment and material in the performance of the subcontract shall be consistent with industry standards and shall demonstrate that the DBE and not some other business entity is actually performing the subcontract. For example, when a DBE associates itself too closely with another business entity or entities, in acquiring a labor force, supervisors, equipment or materials to an extent inconsistent with industry standards, the DBE can no longer be said to be actually performing the subcontract because a partnership or joint venture, of which the DBE is a member, is the actual performer of the subcontract.

(b) DBE's Work Force - The DBE shall solicit, hire, place on its payroll, direct, and control all workers performing work under its contract. The DBE owner or its superintendent shall, on a full-time basis, supervise and control the work of the contract. The DBE may with the prior written consent of the Engineer augment its work force with personnel of another firm. The Engineer shall approve the request only when:

- Specialized skills are required, and
- The use of such personnel is for a limited time period.

(c) DBE Equipment - The DBE is expected to perform the work with equipment that is owned, being purchased, or leased by the DBE under a written lease agreement that has been consented to by the Engineer prior to the DBE starting work. No credit will be given, nor payment made for the cost of equipment leased or rented and used in the DBE firm's work when payment for those costs is made by a deduction from the Contractor's payment(s) to the DBE firm.

The DBE may lease specialized equipment, provided a written rental agreement, separate from the subcontract specifying the terms of the lease arrangement, is consented to by the

Engineer prior to the DBE starting work. The Engineer will consent to the lease agreement only when:

- The equipment is of a specialized nature,
- The equipment is readily available at the job site,
- The operation of the equipment is under the full control of the DBE,
- The lease arrangement is for a short term,
- The lease arrangement for the specialized equipment in question is a normal industry practice, and
- The DBE shall hire, direct, supervise, control and carry the operator of the equipment on the DBE payroll.

(d) DBE Trucking Firms - Whenever a DBE trucking firm has been committed to meet an assigned DBE contract goal, the Contractor shall ensure that the Committed DBE individually identifies each truck intended for use on the Project on its "Disadvantaged Business Enterprise Work Plan Proposal - Form 3A" or an attached list.

The Contractor shall furnish a daily log of all trucking work performed under the Committed DBE's subcontract. The "Daily DBE Trucking Log" (Form 734-2916), (or an approved equal that contains all the information on the ODOT form, including the certification) shall be completed for each day work is performed under the DBE's subcontract. The Daily DBE Trucking Log shall identify all trucks under the management and supervision of the DBE Subcontractor used on the Project.

The Contractor shall submit the Daily DBE Trucking Log to the Engineer on a weekly basis and no later than 14 Calendar Days after the first recorded date in the logs. For owner-operator trucks, the Contractor shall comply with 00170.65(b-4).

The following factors will be used to determine if a DBE Trucking firm is performing a CUF:

- The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE shall itself own and operate at least one fully licensed, insured and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. • The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- According to 49 CFR 26.55(d)(5) the DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by the non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangements.

- For the purposes of this paragraph, a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.

(e) DBE Flagging Firms - DBE flagging firms shall be responsible for ensuring all their dispatched employees meet the required certification and licensing requirements and for furnishing their employees with equipment (in this case, paddles and radios) to perform the committed work. This does not preclude the DBE's employees from supplementing with their own equipment.

10.00 Termination and Substitution of DBEs - The Contractor must comply with the requirements and procedures under 49 CFR 26.53(f). The Contractor shall use the specific DBEs listed in response to a contract goal to perform the work and supply the materials for which each is listed unless the contractor obtains the Agency's prior written consent. Without the Agency consent, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. Contractor must provide the DBE with written notice and supporting documentation of its good cause reasons they wish to terminate and/or substitute the DBE with a copy to the Engineer and Agency's designated civil rights field coordinator. The DBE must be given 5 days to respond to the termination request, copying the Agency's designated civil rights field coordinator. Agency's civil rights field coordinator will coordinate and consult with ODOT Office of Equity and Civil Rights as appropriate to determine whether good cause exists for Agency to consent to contractor's request to terminate and or/substitute the DBE.

The Agency may provide such written consent only if it agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the DBE firm because the DBE is unable, unwilling or ineligible to perform. To initiate the termination, substitution, removal or replacement process with a Committed DBE contractor/supplier (regardless of the tier), the Contractor or lower tier contractor/Subcontractor must do the following:

(a) Contractor Notice of Termination of a Non-Committed DBE - The Contractor shall notify the Agency in writing of plans to terminate a non-Committed DBE. Include the name of the non-Committed DBE to be terminated, a brief explanation of the reason for termination, and the adjusted DBE subcontract or agreement amount.

(b) Contractor Written Request to Terminate a Committed DBE - All Contractor requests to terminate, substitute or replace a Committed DBE, including a partial termination or substitution of work committed to a DBE, shall be in writing and shall include the following information:

- Date the Contractor determined the DBE to be unwilling, unable or ineligible to perform.
- Projected date Contractor will require substitution or replacement DBE to commence work if consent is granted to the request.

- Brief statement of facts describing and citing specific actions or inaction by the DBE giving rise to the Contractor's assertion that the DBE is unwilling, unable or ineligible to perform.
- Brief statement of the affected DBE's capacity and ability to perform the work as determined by Contractor.
- Brief statement of facts regarding actions taken by Contractor that are believed to constitute good faith efforts toward enabling the DBE to perform.
- To date percentage of work completed on each bid item by the DBE.
- The total dollar amount paid, per bid item, to date for work performed by the DBE.
- The total dollar amount, per bid item, remaining to be paid to the Committed DBE for work completed, but for which the DBE has not received payment and with which the Contractor has no dispute.
- The total dollar amount, per bid item, remaining to be paid to the DBE for work completed, but for which the DBE has not received payment and over which the Contractor and/or the DBE have dispute.
- A written, signed statement from the DBE, provided the DBE concurs with request to terminate, indicating its unwillingness or inability to perform.

(c) Contractor Written Notice to Committed DBE of Pending Request to Terminate and Substitute with Another DBE - The Contractor shall send a copy of the request to terminate and substitute letter to the affected Committed DBE in conjunction to submitting the request to the Engineer. The affected DBE firm may submit a response letter to the Engineer within five Calendar Days of receiving the notice from the Contractor. The affected DBE firm may explain its position concerning performance on the committed work. The Engineer will consider both the Contractor's request and DBE's response and explanation before approving the Contractor's termination and substitution request. If the Contractor is unsuccessful in notifying the affected DBE firm, after trying its best to deliver a copy of its request letter, the Agency may determine that the affected Committed DBE is unable or unwilling to continue the contract and a substitution will be immediately approved by the Engineer. Contractor must provide the DBE with written notice and supporting documentation of its good cause reasons they wish to terminate and/or substitute the DBE with a copy to the Engineer and Agency's designated civil rights field coordinator for the project. The DBE must be given 5 days to respond to the termination request, copying Agency's civil rights field coordinator. Agency's civil rights field coordinator will coordinate and consult with the ODOT Office of Equity and Civil Rights as appropriate.

(d) Proposed Substitution of Another Certified DBE - When a Committed DBE substitution shall occur, the Contractor may submit another eligible DBE firm to replace the original committed firm in writing. The Contractor shall submit the name of the DBE firm, the proposed work to be performed, and the dollar amount of the work. The Contractor shall give pertinent information including bid item, item description, bid quantity and unit, unit price, and total price. In addition, the Contractor shall submit a written DBE Work Plan for the requested substitute DBE according to Section 07.00. The dollar value of work to be performed by the substitute DBE shall be in an amount equal to the dollar value of the amount committed to the terminated DBE, minus the value of work performed to date by the DBE, prior to the request for substitution. Should the Contractor be unable to commit the required dollar value to the substitute DBE, the Contractor shall provide written evidence of

good faith efforts made to obtain the substitute value requirement. The Agency will review the quality and intensity of those efforts. Efforts that are merely superficial are not good faith efforts to meet the assigned DBE contract goal. The Contractor shall document the steps taken to obtain participation which demonstrate the good faith efforts outlined below:

- Evidence that the Contractor attended any pre-solicitation or prebid meetings that were scheduled by the Agency to inform DBE firms of contracting and subcontracting or material supply opportunities available on the project;
- Evidence that the Contractor identified and selected specific economically feasible units of the project to be performed by DBE firms in order to increase the likelihood of participation by DBE firms;
- Evidence that the Contractor advertised in general circulation, trade association, minority and trade oriented, women-focus publications, concerning the subcontracting or supply opportunities;
- Evidence that the Contractor provided written notice to a reasonable number of specific DBE firms, identified from the DBE Directory of Certified Firms for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;
- Evidence that the Contractor followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested. The Contractor should provide the following information as evidence:
 - The names, addresses, and telephone numbers of DBE firms who were contacted, the dates of initial contact and whether initial solicitations of interest were followed up by contacting the DBE firms to determine with certainty whether the DBE firms were interested;
 - A description of the information provided to the DBE firms regarding the plans and specifications and estimated quantities for portions of the work to be performed;
 - Documentation of each DBE contacted, but rejected and the reasons for the rejection.
- Evidence that the Contractor provided interested DBE firms with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;
- Evidence that the Contractor negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
- Evidence that the Contractor advised and made efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance required by the Agency or Contractor;
- Evidence that the Contractor's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the assigned DBE contract goal or requirements of the Agency;
- Evidence that the Contractor used the services of minority community organizations, minority organizations identified by the Advocate for Minority and Women Business that provide assistance in the recruitment and placement of disadvantaged, minority, or women business enterprises; and

- Evidence that the Contractor used the services of the Agency's Supportive Services Contractor(s).

11.00 Changes in Work Committed to DBEs - The Agency will consider the impact on DBE participation in instances where the Agency changes, reduces, or deletes work committed to a DBE at the time of contract award. In such instances, the Contractor shall not be required to replace the work but is encouraged to do so. If the prime Contractor proposes any changes that involve a Committed DBE, the Contractor shall notify the affected DBE of the proposed change, reduction, or deletion of any work committed at the time of contract award prior to executing the change order. The Contractor shall enable the affected DBE to participate in the change order request and will make every effort to maintain the Committed DBE percentage that was the condition of contract award. Documentation of this effort and a letter from the DBE agreeing to the change shall be included with the request.

12.00 Contractor Payments to Subcontractors and Suppliers:

(a) DBE-Related Records - The Contractor shall maintain records of all subcontracts or other agreements entered into with DBE firms and records of materials purchased from DBE suppliers. Such records shall show the name and business address of each DBE Subcontractor or vendor and the total dollar amount actually paid to each DBE Subcontractor or vendor.

(b) Prompt Payment and Release of Retainage - The Contractor shall pay each Subcontractor for satisfactory performance of its contract no later than 10 Calendar Days from receipt of each payment the Contractor receives from the Agency. If retainage is withheld the Contractor shall also return retainage payments to each Subcontractor within 10 Calendar Days after the Subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Engineer. This policy applies to both DBE and non-DBE contractors.

(c) Paid Summary Reports - The Contractor shall submit a "Paid Summary Report" (Form 734-2882) to the Engineer certifying payments made to all of the following:

- All Subcontractors
- Committed DBE suppliers
- Non-Committed DBE suppliers and service providers with estimated total payments for the Project over \$5000.

The Contractor shall submit the completed and signed Paid Summary Report to the Engineer within 20 days of receipt of payment from the Agency for each month in which payments were made to each Subcontractor, each Committed DBE supplier, and each non-Committed DBE supplier or service provider with estimated total payments for the Project over \$5000. At the completion of the project, submit Form 734-2882 recapping the total amounts paid to each Subcontractor, and each Committed DBE supplier, and each non-Committed DBE supplier or service provider with estimated total payments for the Project over \$5000.

The Contractor shall require each Subcontractor at every tier to comply with the requirement to submit Form 734-2882 within 20 days of receipt of payment from its controlling contractor and provide a recap of the total amounts paid at the completion of the project or completion of their Work.

Forms shall be submitted to an email address or by other means as provided by Agency to the Contractor at the Preconstruction Conference.

The participation of a DBE Subcontractor will not be credited towards the Contractor's assigned DBE contract goal, or the overall goal, until the amount being counted toward the goal, and any retainage held by the Contractor has been paid to the DBE.

13.00 Remedies - Failure of any Contractor to meet the requirements cited in Section 01.00(b) constitutes a breach of contract for which the imposition of the following sanctions could occur:

- Temporarily withholding progress payments until the Contractor complies with these provisions through future performance.
- Permanently withholding payment for work already performed in a manner that constitutes a breach of contract.
- Suspension of work according to CM/GC 00180.70.

Any Bidder or Contractor or Subcontractor on a public contract that violates the provisions of ORS 200.075 shall have its right to bid on or participate in any public contract suspended for up to 90 days for a first violation, up to one year for a second violation and up to five years for a third violation.

Each violation shall remain on record for five years. After five years, the violation shall no longer be considered in reviewing future violations.

Failure of a Bidder, Contractor, or Subcontractor to comply with the requirements cited in Section 01.00(b) when there appears to be evidence of criminal conduct, shall be referred to the Oregon Department of Justice and/or the FHWA Inspector General for criminal investigation, and if warranted, prosecution.

14.00 Records and Reports - The Contractor shall keep such project records as are necessary to determine compliance with these DBE Supplemental Required Contract Provisions, including but not limited to records on equipment usage, fuel consumption, invoicing, and payments. Such records shall include written reports from the DBE Liaison Officer to the Contractor as to the performance of the committed DBE and its performance of a commercially useful function. Contractor shall provide the Engineer with records on equipment and fuel logs and other records needed to verify compliance with commercially useful function and DBE crediting requirements.

15.00 Further Information - The Disadvantaged Business Enterprise Supplemental Required Contract Provisions shall be incorporated into and attached to all agreements and contracts on projects financed in whole or in part with federal funds.

For further information concerning Disadvantaged Business Enterprise participation, including confirmation of certification for type of work, contact, in writing, the DBE Program Manager not later than one week prior to the project Bid Opening at ocrinforequest@odot.state.or.us.

Other requests may be directed to:

Oregon Department of Transportation
Office of Equity and Civil Rights
800 Airport Rd SE Salem, OR 97301
Phone: 503-986-4350 Fax: 503-986-6382
ocrinforequest@odot.oregon.gov

EXHIBIT C-6

DBE COMMITMENT REQUIREMENTS AND CERTIFICATION AND UTILIZATION FORM

1. DBE Policies, Obligations, Applicabilities, and Authorities

According to 49 CFR Part 26, ODOT, Agency, all proposers, and all Contractors shall agree to abide by and take all necessary and reasonable steps to comply with the DBE policies, obligations, applicabilities and authorities listed in the Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions.

The "assigned DBE contract goals" for this project are referred to in Article 15 of the CM/GC Contract and will be determined by the Agency 30 Calendar Days after the 60% A&E Design Phase Submittal Milestone (see CM/GC 00141.40) for each EWA and the GMP Amendment, and will be specified as part of each Early Work Amendment, the Guaranteed Maximum Price (GMP) Amendment, and if applicable, other amendments or change orders.

2. Eligibility Requirements for DBE Participation on Projects

Participation shall be accomplished by including certified DBEs in any part of the work that is necessary to complete the obligation. A certified DBE may participate as a prime Contractor, Subcontractor, joint venture, material supplier, material manufacturer, or professional service provider.

Only those firms certified by the State of Oregon Certification Office of Business Inclusion and Diversity (COBID) as a DBE in the types of work selected shall be eligible to fulfill required DBE participation obligations.

3. Crediting of DBE Participation Toward Meeting an Assigned DBE Contract Goal

(a) Crediting of DBE Participation

Credit toward meeting an assigned DBE contract goal shall be granted only when a listed firm is certified by COBID as a DBE at the time of execution of the Early Work Amendment, the GMP Amendment, or other amendment or change order, as applicable. Contractors should not assume that a minority-owned or a woman-owned firm is currently certified by COBID as a DBE firm or that a firm is certified to perform any particular type of work. Contractors are encouraged to verify each DBE firm's certification by:

1) requesting a copy of the DBE certification letter from the committed DBE firm and contacting COBID at 503-986-0075 to confirm the firm's current certification status; or

2) accessing the updated Certification Directory of DBEs by going to the COBID website at <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>

For joint ventures, the percentage of DBE participation to be credited toward an assigned DBE contract goal will be determined and approved by ODOT on the basis of information submitted in the joint venture application submitted to Agency.

The total dollar value of and the scope of work for the DBE commitment as shown on the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM shall be credited toward meeting the assigned DBE contract goal for an Early Work Amendment, the GMP Amendment, or other Amendment or Change Order, provided the DBE performs a Commercially Useful Function according to 49 CFR 26.55(c)(1).

(b) Crediting of DBE Participation through the Use of DBE Manufacturers

The Contractor may count 100% of its expenditure to a DBE manufacturer. According to 49 CFR 26.55(e)(1)(i), a DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

The Contractor may count 100% of its expenditures for a DBE firm that furnishes and places these materials only if the DBE firm is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The DBE shall negotiate the cost, arrange delivery of, and pay for the materials and supplies required for the work of its contract. Invoices for materials must be invoiced to the DBE firm and not to the Contractor.

(c) Crediting of DBE Participation Through Use of DBE Regular Dealers

The Contractor may count only 60% of the committed amount for the cost of supplies and materials from regular dealers toward meeting the assigned DBE contract goal. According to 49 CFR 26.55(e)(2)(i) a DBE regular dealer owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

No credit will be granted if the Contractor makes a direct payment to a material supplier. However, it will be permissible for a material supplier to invoice the Contractor and the DBE jointly and be paid by the Contractor making remittance to the DBE firm and material supplier jointly, provided such joint payment arrangements receive prior written approval from Agency.

No credit will be granted if the Contractor deducts from the amounts owed to DBE firms for work performed the costs for: (1) materials and service ordered by the DBE firm and used by the DBE in performing its work, (2) purchase price of supplies or materials acquired from the Contractor by the DBE firm and used by the DBE in performing its work, and (3) cost of equipment leased or rented from the Contractor by the DBE firm and used by the DBE in performing its work. Credit shall be withheld where such costs have been deducted from dollar amounts paid to DBE firms for work performed.

(d) Crediting of DBE Participation through Use of DBE Service Providers

Credit toward meeting the assigned DBE contract goal through use of DBE service providers shall be granted for:

- (1) The fees or commissions charged for providing a BONA FIDE service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies

required for performance of the Contract, provided that the fee or commission is determined by Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- (2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials or supplies. The fee must be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (4) The total dollar value of payments to the DBE for which a Commercially Useful Function was performed in delivering a professional, technical and/or expert service.

(e) Crediting of DBE Participation through Use of DBE Owner/Operator Trucking

A DBE owner/operator must own and operate at least one truck and be certified by COBID.

In order for the Contractor or Subcontractor to be credited and receive payment for DBE owner/operator trucking participation, a valid agreement that includes or has attached the following information must be submitted to the Engineer:

- (1) Driver's name;
- (2) Copy of driver's license;
- (3) Vehicle identification number;
- (4) Copy of vehicle registration;
- (5) Motor vehicle license plate number;
- (6) Motor Carrier Plate Number;
- (7) Copy of ODOT Motor Carrier 1A Permit;
- (8) Name of owner/operator from the side of the truck; and
- (9) Method of payment (hour, ton or load)

(f) Crediting of DBE Participation through Use of DBE Trucking Firms

In order for the Contractor to receive credit and payment for the use of a DBE trucking firm, the trucking firm must be covered by a subcontract or written agreement, and the Engineer must have granted consent to that subcontract or agreement prior to the beginning of the work.

4. Documentation of Contractors' Proposed DBE Participation

(a) DBE Commitment Certification and Utilization Form

The DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM is included as part of this Exhibit C-6.

DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM shall become a part of each resulting Early Work Amendment, if any, and the resulting GMP Amendment.

For each Early Work Amendment and the GMP Amendment, if the assigned DBE contract goal is greater than zero, the Contractor must complete, sign, and submit a DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM with the Pre-construction Phase Evaluation Report following receipt of the 100% A&E Plan submittal (see Section CM/GC 00141.40 of the CM/GC General Provisions). The form must be completed and signed by the Contractor's authorized representative. In Part I of the form, the Contractor shall fill in each committed DBE firm and its corresponding type of work, its capacity, and the subcontract amount, expenditure, fee, or commission. Should the Contractor fail to completely fill out, sign, and submit the form as required when the assigned DBE contract goal is greater than zero, the Agency will not execute the applicable Early Work Amendment or GMP Amendment. The Agency will calculate each DBE amount, total the amount to be applied to the assigned DBE contract goal and calculate the DBE commitment as a percentage of the Estimated Cost of the Work for the Amendment.

(b) DBEs Proposing as Prime Contractors

The requirements of section 4(a) will apply to DBE Contractors for a Contract. In determining whether a DBE Contractor for a Contract has met an assigned DBE contract goal, only the work the DBE has committed with its own forces as well as the work that it has committed to be performed by DBE Subcontractors, suppliers, or service providers will be counted.

DBE prime Contractors shall complete the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM indicating the percentage of work to be performed by its own forces as well as the work to be performed by other committed DBEs to meet an assigned DBE contract goal.

(c) DBE Commitment Certification Form Part II - Good Faith Efforts

It is intended that the Contractor meet the assigned DBE contract goals for DBE participation. It is recognized that in rare exceptions it may not be possible for all Contractors to meet an assigned DBE contract goal. In the event a Contractor has failed to meet an assigned DBE contract goal, Agency must decide whether the efforts made to obtain DBE participation for that assigned DBE contract goal constituted good faith efforts. Agency will review the quality and intensity of those efforts in consultation with ODOT Office of Equity and Civil Rights. Efforts that are merely superficial are not good faith efforts to meet an assigned DBE contract goal.

In the event a Contractor is unable to meet an assigned DBE contract goal, the Contractor shall provide additional information regarding good faith efforts per the requirements Part II of the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM. The Contractor must document the steps taken to obtain DBE participation, which demonstrate good faith efforts, such as those outlined below:

- (1) Evidence that the Contractor held any meetings to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;
- (2) Evidence that the Contractor identified and selected specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs;

- (3) Evidence that the Contractor advertised in general circulation, trade association, minority and trade oriented, women-focus publication, concerning the subcontracting or supply opportunities;
- (4) Evidence that the Contractor provided written notice to a reasonable number of specific DBEs, identified from the Certification Directory of DBEs for the selected subcontracting of material supply work, in sufficient time to allow the enterprises to participate effectively;
- (5) Evidence that the Contractor followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested.

This may include the information outlined below:

- a. The names, addresses, and telephone numbers of DBEs who were contacted, the dates of initial contact and whether initial solicitations of interest were followed up by contacting the DBEs to determine with certainty whether the DBEs were interested;
 - b. A description of the information provided to the DBEs regarding the plans and specifications and estimated quantities for portions of the work to be performed;
 - c. Documentation of each DBE contacted but rejected and the reasons for the rejection.
- (6) Evidence that the Contractor provided interested DBEs with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;
 - (7) Evidence that the Contractor negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
 - (8) Evidence that the Contractor advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the Agency or Contractor;
 - (9) Evidence that the Contractor's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the assigned DBE contract goal or requirements;
 - (10) Evidence that the Contractor used the services of minority community organizations, minority contractor groups, local, state, and federal minority business assistance offices and other organizations identified that provide assistance in the recruitment and placement of disadvantaged, minority, or women business enterprises; and
 - (11) Evidence that the Contractor used the services of ODOT's or another agency's or organization's small business Supportive Services contractor(s).

(d) Failure to Comply

All Contractors, including certified DBE prime Contractors, shall submit a completed and signed DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM for each

Early Work Amendment, if any, and the GMP Amendment when the assigned DBE contract goal is greater than zero.

If the Contractor fails to properly and completely fill out the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM and/or to provide sufficient evidence of compliance with good faith effort requirements, the Agency will not execute the applicable Early Work Amendment or GMP Amendment.

5. Requirements for Execution

The following requirements are in addition to other requirements in the Contract Documents for execution of Early Work Amendments, the GMP Amendment, and other Amendments and Change Orders:

- (a) The execution of an Early Work Amendment, the GMP Amendment, and other Amendments or Change Orders will be in the best interest of the Agency, and the participation of DBEs on those Amendments will support Agency in meeting its commitment to meet any assigned DBE contract goals and ODOT in meeting its commitment to its overall statewide DBE goal.
- (b) If the Contractor meets or exceeds the assigned DBE contract goal, or if the Contractor is unable to achieve the assigned DBE contract goal but meets the Good Faith Efforts requirements of the Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions and the Disadvantaged Business Enterprise (DBE) Commitment Requirements in Exhibits C-5 and C-6 to the CM/GC Contract, for an Early Work Amendment, the GMP Amendment, or other Amendments or Change Orders, that Contractor will be considered responsive to the DBE requirement for that Amendment or Change Order.
- (c) If a DBE's type of work listed on the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM does not match the type of work for which the DBE is certified by COBID, then the firm's participation on that Amendment or Change Order cannot count toward the assigned DBE contract goal or overall DBE goals. The Contractor shall meet or exceed assigned DBE contract goals by committing sufficient other work to one or more certified DBE firms with matching types of work, or establishing sufficient good faith efforts.
- (d) If the Contractor has not met an assigned DBE contract goal, Agency will review the documentation regarding its good faith effort activities to determine in consultation with ODOT if the steps taken are satisfactory. If the steps taken are found satisfactory during the review process, the Contractor will be considered responsive to the DBE requirement. If the steps taken are not found satisfactory, the Contractor will be considered non-responsive to the DBE requirements.
- (e) If the Contractor is determined to be non-responsive to the DBE requirements for an Amendment or Change Order, Agency, before executing the Early Work Amendment, GMP Amendment, or other Amendment or Change Order, will notify the Contractor in writing. The notification will include the reason for the determination and provide the Contractor an opportunity for administrative reconsideration.

Administrative Reconsideration will be conducted by ODOT in coordination with Agency and includes:

- (1) The Contractor will have the opportunity to provide written documentation or argument to the Review Committee, consisting of personnel knowledgeable with DBE Program requirements, concerning the issue of whether it met the assigned DBE contract goal or made adequate good faith efforts to do so for the Amendment or Change Order, within four Calendar Days of the receipt of notification.
- (2) Upon request, the Contractor will have the opportunity to meet in person with the Review Committee, to discuss the issue of whether it met the assigned DBE contract goal or made adequate good faith efforts to do so for the Amendment or Change Order.
- (3) The Review Committee will make a decision on reconsideration within four Calendar Days after reviewing evidence of Good Faith Efforts.
- (4) The Contractor will be notified in writing by the Review Committee regarding the decision of reconsideration within five Calendar Days of the decision. This notice will explain the basis for finding that the Contractor did or did not meet the assigned DBE contract goal or make adequate good faith efforts to do so for the Amendment or Change Order.
- (5) The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

6. DBE Contract Compliance before Execution of Amendments

If an assigned DBE contract goal for an Early Work Amendment, the GMP Amendment, and if applicable, other amendments, is greater than zero, the Contractor shall provide Agency with a completed Committed DBE Breakdown and Certification Form describing the work to be performed by each DBE firm before execution of that Early Work Amendment or the GMP Amendment.

The Contractor shall submit the following breakdown information: pay item, type of work, pay item quantity and unit, unit price, and total price. Furthermore, the Contractor shall indicate partial work on a pay item and explain the partial item work. If trucking is a DBE committed work item, the Contractor shall indicate if the DBE firm is an owner/operator trucking firm. The Contractor and the Committed DBE Contractor shall sign the form.

7. Information Relating to Contractors Soliciting Project Participation (Bidders List)

Within 10 Calendar Days after execution of each Early Work Amendment, the GMP Amendment, or other Amendment or Change order, if applicable, the Contractor shall provide information requested in the Subcontractor Solicitation and Utilization Report (Form 734-2721), listing bona fide bids or quotes received on this project. The information provided will be used to construct a Bidders List required by 49 CFR 26.11(c). The Subcontractor Solicitation and Utilization Report form is available from the ODOT Office of Equity and Civil Rights at:

<http://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>

8. Information Relating to the DBE Requirements on this Project

For further information concerning Disadvantaged Business Enterprise participation, including confirmation of certification for type of work, contact in writing, the DBE Program Manager at ocrinforequest@odot.state.or.us.

Other requests may be directed to:

Oregon Department of Transportation
Office of Equity and Civil Rights
800 Airport Rd SE Salem, OR 97301
Phone: 503-986-4350 Fax: 503-986-6382
ocrinforequest@odot.oregon.gov

DBE CERTIFICATION AND UTILIZATION FORM

Project Name _____

Amendment or Change Order Number _____

DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM

This DBE Certification and Utilization Form applies solely to meeting the assigned DBE contract goal for DBE participation. If the assigned DBE contract goal for an Early Work Amendment, the GMP Amendment, or other Amendment or Change Order is greater than zero the Contractor shall complete and submit this form for that Amendment or Change Order. This certification shall be deemed a part of the Contract.

The Contractor acknowledges and certifies that this form accurately represents receipt of and consent from the listed DBE firm as to the use of the referenced itemized quote below for the performance of the Work included in the Amendment or Change Order. The Contractor certifies that it had direct contact with the named DBE firms regarding participation in the Work included in the Amendment or Change Order. The Contractor certifies that it shall award subcontracts to or enter into agreements with the named DBE's.

If the Contractor is submitting evidence of good faith efforts to secure participation, the Contractor certifies that the good faith efforts documentation is true, accurate and correctly reports the actions taken by the Contractor.

Contractor's Authorized Representative (PRINT)

Contractor's Authorized Representative (SIGN)

Date

Name of Contractor (Company Name)

PART I

These columns to be completed by Bidder				These columns to be completed by Agency	
Name of DBE Firm	Type of Work *	Function ** (examples: Sub., Supp., DBE Man., Serv., Brok.)	Subcontract Amount (or expenditure amount or fee/commission amount)	Goal Participation % ***	DBE Amount ****

* From " Certification Office of Business Inclusion and Diversity " ** From "Function" column below. *** From "Goal Participation %" column below. ****
(Subcontract Amount x Goal Participation %)

Function	Goal Participation %	This section to be completed by Agency	
Subcontractor	100% (of subcontract amount)	ASSIGNED DBE CONTRACT GOAL %	
Supplier (Regular Dealer)	60% (of supply expenditure amount)	TOTAL DBE AMOUNT	\$

DBE Manufacturer	100% (of material expenditure amount)	TOTAL AMOUNT (Maximum Early Work Price or amount for Work added by GMP)	\$
Service Provider	100% (of fee or commission)	DBE COMMITMENT (TOTAL DBE AMOUNT ÷ TOTAL AMOUNT)	%
Broker	100% (of brokerage fee only)	(calculated to two decimal places (0.01))	

Additional sheets may be used by copying this form.

Contractor must sign each additional sheet to certify its content and completion of form.

PART II

If Contractor's participation commitment to eligible DBEs is less than the assigned DBE contract goal for the Amendment or Change Order, Contractor shall submit documentation of "good faith efforts" as evidence of actions to secure DBE participation.

Contractor's documentation of "good faith efforts" shall meet the requirements provided in the Disadvantaged Business Enterprise (DBE) Commitment Requirements, item no. 4(c) DBE Commitment Certification Form Part II - Good Faith Efforts, which outlines the activities considered for good faith efforts.

EXHIBIT C7
OREGON DEPARTMENT OF TRANSPORTATION POLICY STATEMENT

EXHIBIT C-8
ASSIGNED DBE CONTRACT GOAL

The Agency will specify a separate assigned DBE contract goal for each Early Work Amendment, the GMP Amendment and, as applicable, other Amendments or Change Orders. The Agency will specify each assigned DBE contract goal following the 60 percent A&E design phase submittal milestone applicable for each Early Work Amendment and the GMP Amendment (see CM/GC 00141.40). For assigned DBE contract goals for other Amendments or Change Orders, the Agency will specify the goal at the earliest practicable time before execution of such other Amendments or Change Orders.

A Certification Directory of DBEs is available from the Certification Office of Business Inclusion and Diversity (COBID) website at:

<https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>

or by telephone at 503-986-0075.

EXHIBIT C-9
FEDERAL ON-THE-JOB, APPRENTICESHIP TRAINING, ACCEPTABLE WORKSITE and
PRIORITY HIRING CONTRACT PROVISIONS

This Section for Federal On-the-Job Training and Apprenticeship Training supersedes subparagraph B(7-e) of the "On-Site Workforce Affirmative Action Requirements for Women and Minorities on Federal Aid Contracts," and is in implementation of 23 U.S.C. 140(a). All other provisions apply. See CM/GC General Provisions 00110.01 and 00110.20 for additional Abbreviations and Definitions.

SECTION 1: ABBREVIATIONS AND DEFINITIONS

A. Abbreviations

AWP - Acceptable Worksite Program

BOLI - Bureau of Labor and Industries for the State of Oregon

EEO - Equal Employment Opportunity

EEOC - Equal Employment Opportunity Commission

HWRP - Highway Workforce Response Plan

JATC - Joint Apprenticeship Training Committee

OECD - ODOT Office of Equity and Civil Rights

OJT - On-the-Job Training

B. Definitions

Acceptable Worksite - is defined as a worksite that is appropriate, productive, safe, and free from behaviors that may undermine workers' job performance, physical safety, psychological safety, productivity, inclusion, retention, the equitable access to meaningful work, and/or efficiency. A person violates an Acceptable Worksite when the person exhibits behaviors that a reasonable person should have known would cause a worker to be humiliated, intimidated, or otherwise treated in an inappropriate, unprofessional, discriminatory, disrespectful, exclusionary, or differential manner. Intent of the person who exhibits such a behavior is not relevant to the behavior's effect.

Affirmative Action - Contractor's efforts exerted towards achieving equal opportunity through positive, aggressive, and continuous result-oriented measures to correct past and present discriminatory practices and their effects on the conditions and privileges of employment.

These measures include, but are not limited to, recruiting, hiring, promotion, upgrading, demotion, transfer, termination, compensation, and training.

Apprenticeship Training Program - A specific Apprenticeship Training Program, approved by BOLI, which provides a combination of field and classroom trade specific experience under the supervision of journey level workers. For this Contract, this is a Race and Gender Neutral program.

OJT Program - A specific on-the-job training program, approved by the Agency and FHWA, which provides a combination of field, and limited classroom, trade specific experience under the supervision of journey level workers. This is an Affirmative Action program that targets women and minorities.

Priority Hire Zip Codes – Zip codes that meet the geographic, economic and educational criteria for hiring as identified in Table 1.

Priority Workers – Workers that reside in Priority Hire Zip Codes hired for the following positions: Apprentice Level/Trainee, Journey Level, Supervisor / Foreman level (working).

Qualified Hours - Specific On-Site training hours (may include some classroom hours) completed by a properly registered and enrolled trainee consistent with the Contractor's OJT Program or an apprentice consistent with the Apprenticeship Training Program. The Contractor reports these Qualified Hours to the Agency for the OJT and Apprenticeship Training Goal.

Race and Gender Neutral - Employment and contracting practices where the ethnicity and the sex of a person are not considered in the evaluation of candidates for employment or bids for the Contract.

Training Goal - A fixed quantity of Qualified Hours set by the Agency and included in the bid schedule.

Workforce Priority Hiring – A program for the hiring of Priority Workers that reside in Priority Hire Zip Codes as a percentage of the Contract Labor Hours worked recorded on the project.

SECTION 2: POLICY STATEMENT

In order to increase the number of trained and skilled workers in highway construction the Agency will set a Training Goal for the Project.

It is the policy of the Agency that the Contractor shall take all necessary and reasonable steps to ensure that trainees and apprentices have the opportunity to participate on highway construction projects and to develop as journey-level workers in the given trade or job classification employed, and to meet this Training Goal.

The Contractor shall adopt the following policy:

It shall be the policy of the Contractor to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin, age or disability. Such action shall include 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, pre-apprenticeship, and on-the-job training.

The Training Goal is not intended, and shall not be used to discriminate against any applicant, whether members of a minority group or not.

It is the policy of the Agency that all worksites should be Acceptable Worksites, and Contractor shall take reasonable steps to promote an acceptable worksite program.

It is the policy of the Agency to promote equity and workforce development, and Agency believes priority hiring based on geographic preferences will further its equity goals and enhance workforce development opportunities in the construction industry.

SECTION 3: ACCEPTABLE WORKSITE PROGRAM

Acceptable Worksite Program

The Contractor shall plan and implement an Acceptable Worksite Program (AWP) which meets or exceeds the criteria listed below or recommendations by EEOC in the "Select Task Force on the Study of Harassment in the Workplace Report." While maintaining and managing an AWP is the Contractor's responsibility, each Subcontractor must also have the same requirements in their contract. Maintaining and managing an AWP is the Contractor's responsibility and includes onboarding every onsite worker and contractor performing work to the site's AWP. Much like onsite safety programs, Acceptable Worksite Programs are continual and require ongoing messaging and engagement to build awareness and adherence. Additionally, like safety training, the AWP rollout must be managed by individuals or organizations with demonstrated content expertise.

Acceptable Worksite

The Contractor shall implement an Acceptable Worksite and must include the same requirements in all subcontracts. A person violates an Acceptable Worksite when the person exhibits behaviors that a reasonable person should have known would cause a worker to be humiliated, intimidated, or otherwise treated in an inappropriate, discriminatory, or differential manner. Intent of the person is not relevant.

An approved Acceptable Worksite Program must contain but not be limited to the following attributes:

1. Provides evidence-based training for Executives, Managers, Supervisors, Foremen, major project stakeholders and other site leaders promoting awareness of the prevalence and harms of disrespectful behavior on the job site, *prior* to the start of construction.
2. Mandatory onboarding for all every worker, Agency employee, Subcontractor, Subcontractor employee and any vendor performing onsite work, prior to their participation on the project, that measurably increases their knowledge of:

- the types of disrespectful behaviors that will not be permitted (by company policy, government regulation, contract, and/or other applicable dictates) on the job site
 - the process for reporting an incident
 - the consequences of perpetrating harmful behavior including the threat of retaliation for reporting
 - how workers should act to counter disrespectful behavior in constructive ways that maintains health, safety and productivity on the job site
 - how site leadership will act promptly and appropriately respond to reported and observed incidents of disrespectful behavior on the job site
3. Reinforces positive jobsite culture education over the duration of the project with evidence-based prevention and bystander intervention training equivalent to [Green Dot for the Trades](#) or [RISE Up](#) through regularly scheduled 'tool box talks' and other jobsite trainings that reinforce positive jobsite culture
 4. RWP program information posted throughout the jobsite regarding how to report incidents and the consequences for violating harassment policy including retaliation for reporting
 5. Daily jobsite scanning, removal and investigation of any and all symbols of hostility, bullying, racism and sexism or degrading graffiti written on or attached to any location within the project prior to start of workday.

Incident Reporting process should include but not be limited to:

- Third party provided hotline or other resource on the jobsite for anonymous reporting of incidents
- Clear protocols for supervisory personnel to immediately report incidents
- Clear protocols for communication of incidents up the chain of command for all entities including but not limited to Owner
- Clear protocols to appropriately report any unlawful incidents to the relevant law enforcement and hate crime entities

Post-Incident Management and Resolution Process should include but not be limited to:

- Reporting of incident to law enforcement entity or entities if applicable
- Immediate and on-going follow up with reporting individuals and/or victims conducted by qualified individuals
- Immediate investigation by qualified individuals
- Jobsite-wide safety meeting with all onsite parties outlining the incident and how it violated policy
- Prevention of retaliation against reporters/victims including but not limited to removal of individuals from the site if applicable
- Additional training on anti-hostility, anti-bullying, anti-racism/anti-bias conducted by outside experts
- Other measures as determined by Owner and Prime to address harmful jobsite culture

Acceptable Worksite Evaluation Requirements

The contractor shall promptly provide all information requested by researchers designated by the Agency, including access to records and opportunities to communicate with employees without interference to evaluate the effectiveness of the required AWP.

To maintain an Acceptable Worksite, all Work must be assigned in a manner that respects training objectives for apprentices and makes a good-faith effort for an equitable distribution of meaningful Work, training, and assignments *among all workers*. While maintaining and managing an Acceptable Worksite is the Contractor's responsibility, each Subcontractor is responsible for implementing the contract requirements for acceptable Worksite performance in sustaining and managing their Work.

All onsite employees, specifically supervisory and management, journey-level craft persons, and apprentices, shall receive the positive Jobsite culture education as part of their Jobsite orientation processes within one week of their project / Jobsite start date.

The Agency will monitor Work to ascertain whether a risk or circumstance exists that may merit a remedy. Monitoring may include proactive observations of the Work, interviews of individuals familiar with the Work, collection of data that may evidence disparities, investigation of complaints by an individual familiar with the Work, or collection of other evidence. If risks or circumstances that may merit a remedy are discovered, Agency will notify and collaborate with the Contractor to discuss appropriate remedies and appropriate unions when necessary for the resolution of the situation, except when unusual circumstances require confidentiality. The Agency may also require other remedies if the Agency regards the situation as urgent, of potential harm, or without timely resolution.

Failure by Contractor or Subcontractors

1. The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Agency for the Contractor or its Subcontractor's failure to comply with the ACCEPTABLE WORKSITE PROGRAM Specifications. The parties further agree that it is difficult, if not impossible, to determine the cost to the Agency when workers do not have an appropriate, productive, safe, and free from bullying, hazing, or harassment worksite. Further agree that such behaviors may impair production and/or undermine the integrity of the work conditions, including but not limited to job performance, safety, productivity, or efficiency of workers.
2. If the Contractor fails to meet the: ACCEPTABLE WORKSITE PROGRAM training at the end of the contract, the Agency may assess a disincentive. Disincentives may be assessed for failure to meet the Acceptable Worksite Training of all contractor and Subcontractor employees on the project.
3. Disincentives will be calculated based on \$1000 per instance of the contractor or Subcontractor or per day of a continuing violation for not attending training no later than within one week of the start date on the project. The disincentive will be prorated to the nearest dollar. Disincentives are in addition to any liquidated damages that may be assessed due to any delay in the project caused by the Contractor's failure to comply with the Acceptable Worksite program requirements of the contract and any other liquidated damages under the Contract

4. This Section is for the benefit of the Agency and its interest in the Project. It does not create any third-party beneficiaries or form the basis of any action against the Agency by a third party (see 00170.79).

SECTION 4: WORKFORCE PRIORITY HIRING

Legal Authority 2021 Appropriations Act Statutory Certifications

Workforce Priority Hiring is authorized under Section 199B of the Consolidated Appropriations Act, 2021, Public Law 116-260, Dec. 27, 2020, 134 Stat 1182. Section 199B expressly authorizes DOT-assisted contracts under titles 49 and 23 of the U.S.C. to use geographic, economic, or any other hiring preference not otherwise authorized by law. The Workforce Priority Hiring includes geographic, economic, and educational criteria in determining hiring preference zip codes that will enhance the workforce development opportunities in the transportation construction industry for low-income and economically disadvantaged communities.

Workforce Priority Hiring Requirements

1. Contractor and Subcontractor(s) on contracts of one hundred thousand dollars (\$100,000) or more must use 20% Workforce Priority Hiring employees that live in a Priority Hire Zip Code as a percentage of the total Contract Labor Hours worked hours recorded on the project.
2. The Contractor shall retain the responsibility for meeting the Workforce Priority Hiring requirements of these special provisions and shall also ensure that these provisions apply to each subcontract on contracts of one hundred thousand dollars (\$100,000) or more. All subcontracts awarded to an individual will be aggregated (i.e., cumulative, to determine if the \$100,000.00 threshold is met).
3. The Contractor shall ensure that a minimum of 20% of all labor hours performed on the project shall be from the Workforce Priority Hiring Zip Codes in Table - 1.

Table - 1		
Workforce Priority Hiring Zip Codes		
97003	97222	97204
97005	97227	97205
97024	97230	97206
97026	97233	97211
97030	97236	97214
97038	97266	97216
97078	97305	97217
97116	97317	97218
97202	97362	97220
97203	97383	
Priority Workers – Apprentice Level, Journey Level, Supervisor / Foreman level (working)		

4. The Contractor required Workforce Priority Hiring choices for Priority Workers are: Apprentice Level/Trainee, Journey Level, and Supervisor / Foreman level (working).

The Contractor and Subcontractor(s) shall not displace, lay off, or fire any of their existing employees in order to satisfy the Workforce Priority Hiring.

Contractor may also request an exception from the 20% Workforce Priority Hiring Zip Codes requirement from the Agency in writing 15 calendar days before starting work, within 15 calendar days before hiring additional Priority Workers during the project, if it will displace, lay off, or require the firing of any of their existing employees to satisfy the Workforce Priority Hiring requirement.

Additional Requirements for Failure to Comply with these Provisions, including Failure by Subcontractors

1. The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Agency for the Contractor or its Subcontractor's failure to comply with the Workforce Specifications.
2. If the Contractor fails to meet the Workforce Priority Hiring provision at the end of the contract, the Agency may assess a disincentive. Disincentives may be assessed for failure to meet the Workforce Priority Hiring 20% of all labor hours performed on the project.
3. Disincentives will be calculated based on \$2,500 for every 100 hours not provided. The disincentive will be prorated to the nearest dollar. Disincentives are in addition to any liquidated damages that may be assessed due to any delay in the project caused by the Contractor's failure to comply with the Workforce Priority Hiring provisions of the contract and any other liquidated damages under the Contract.

SECTION 5: APPRENTICESHIP TRAINING PROGRAM

General

Apprentices shall be paid the appropriate rates approved in connection with their stage in the Apprenticeship Training Program.

Contractors shall submit proof of registration as a Training Agent with the Bureau of Labor & Industry, Apprenticeship & Training Division (ATD) in each trade employed or proof of recognition by ATD for out of state contractors not registered with ATD.

A valid certification by an appropriate apprenticeship committee that the Contractor is an approved training agent shall be prima facie proof of compliance.

EEO Requirements

The Contractor shall ensure that, without discrimination, minorities and women have an equal employment opportunity to compete for and participate as apprentices while supporting a diverse workforce that is representative of the population.

The Contractor shall demonstrate that it will be an EEO employer with a diverse workforce in compliance with the contractual term of equal employment opportunity requirements and Title 23 CFR 230, Subpart D, by completing the ODOT Estimated Workforce Form (Form 734-5286) 15 Calendar Days prior to starting Work.

If the Contractor is unable to verify that it employs a diverse workforce based on the standards described in the paragraph above, then the Contractor must follow the process for recruiting apprentices and journey workers described in the Equal Opportunity Employment Provisions.

This apprenticeship training program is considered by the Agency to be an effort to recruit a diverse workforce. Neither the provisions of any collective bargaining agreement, nor the failure by a union or other workforce provider with whom the Contractor has a collective bargaining agreement, nor any agreement the Contractor has with a joint apprenticeship and training committee, shall excuse the Contractor's obligations under these provisions.

OJT/Apprenticeship Requirements

The Agency has established a Training/Apprenticeship Goal of 20% of total Qualified Hours worked by each apprenticeable trade / craft employed on this project. The Prime Contractor and all Subcontractors shall ensure that a minimum of 20% of labor hours in each apprentice trade performed on the Project by are worked by state registered apprentices throughout the duration of the Project. The Prime Contractor and all Subcontractors shall fulfill the 20% apprenticeship hours requirement without exceeding the applicable ratios approved by the appropriate apprenticeship program.

Apprenticeship training is Race and Gender Neutral, however, the Contractor is still obligated to comply with all applicable EEO requirements

SECTION 6: OJT PROGRAM

EEO Requirements

The Contractor shall make every effort to enroll minority and women trainees by conducting systematic and direct, meaningful recruitment through public and private sources likely to yield minority and women trainees within a reasonable area of recruitment.

Whenever minorities or women are not placed in OJT positions, the Contractor shall provide documented evidence of Affirmative Action recruitment efforts. The Agency will review the documents of the Contractor's systematic and direct, meaningful recruitment efforts to determine whether the Contractor has complied with the criteria in "Required Contract Provisions Federal-Aid Construction Contracts" (FHWA Form 1273), Section II Nondiscrimination.

When filling OJT positions, Contractors are encouraged to hire previously approved trainees who have not yet completed their training.

Training Requirements

The intent of these provisions is to provide real and meaningful training in the construction crafts. Off-Site training is permissible only when it is an integral part of an approved training program and does not comprise a significant part of the overall training. In addition:

- A Contractor, not registered as a training agent, may choose to adopt a standardized OJT Program. Standardized OJT Programs are published at the OECR website at: <https://www.oregon.gov/ODOT/Business/OCR/Pages/Workforce-Development.aspx>
- Some job classifications such as flagger, bookkeeper, clerk/typist, construction assistant or secretary are prohibited from OJT Programs.
- OJT Programs shall always maintain the approved ratio of trainees to journey level workers On-Site.
- OJT Programs shall always maintain the approved types and numbers of equipment On-Site.
- No employee shall be registered as a trainee in any job classification the employee has completed leading to journey level status, or for any job classification in which the employee has been employed as a journey level worker. The Contractor shall keep records, and provide to the Agency, if requested, documents on each trainee.
- Trainees shall be pre-approved by the Agency.

OJT Program trainees shall be paid the journey level rate specified in the contract for the type of work performed.

SECTION 7: TRAINING REQUIREMENTS

The intent of these special provisions is to provide real and meaningful training in the construction crafts. Off-site training is permissible only when it is an integral part of an approved Apprenticeship Training Program and does not comprise a significant part of the overall training.

The Contractor shall maintain sufficient equipment and fully trained journey level workers at all times to train apprentices in the work processes. A valid certification by an appropriate registered apprenticeship committee that the Contractor is an approved training agent shall be prima facie proof of compliance with this requirement. The ratio of apprentices to journey level workers shall be in accordance with the accepted standards for the particular craft or occupation.

(A) Exemptions

Only Apprenticeship Training Programs and OJT Programs approved by and registered with BOLI or OJT Training approved by the Agency may be used to fulfill training requirements under the Federal On-The-Job and Apprenticeship Training Contract Provisions.

Training is intended to be primarily on-the-job training in apprenticeable crafts, and does not include classifications such as flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, fire fighter, or secretary.

(B) Apprenticeship

Contractor and Subcontractor(s) on contracts of one hundred thousand dollars (\$100,000) or more and 300 total project hours must use apprenticeship programs approved and registered with BOLI or reciprocally recognized by BOLI to fulfill training requirements under these provisions. The Contractor shall retain the responsibility for meeting the training requirements of these special provisions and shall also ensure that these provisions apply to each subcontract to which training positions are assigned. All subcontracts awarded to an individual Subcontractor will be aggregated (i.e., cumulative, to determine if the \$100,000.00 threshold is met).

The Contractor shall provide the Agency with monthly progress reports for all trainees working under an approved training program.

The Contractor and Subcontractor(s) shall, as applicable:

1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed on the project by the Contractor and Subcontractor(s) with subcontracts of \$100,000 or more, and 300 total project hours are worked by state registered apprentices throughout the duration of the project
2. Fulfill the 20% apprenticeship /OJT hour's requirement without exceeding the apprentice ratios approved by the applicable apprenticeship program
3. Pay all apprentices / OJT trainees the wages required by any applicable collective bargaining contract or pursuant to state or federal law and regulations.
4. Not use workers previously employed at journey-level or those who have successfully completed a training course leading to journey-level status to satisfy the requirements of these provisions.
5. Provide documentation of the apprenticeship status for all apprentices employed on the project to the Agency (e.g., apprentice dispatch slips or other documentation from the applicable Joint Apprenticeship Training Committee).
6. Count apprentice hours as follows:
 - a. Hours worked on the project by apprentices enrolled in state-approved apprenticeship programs or Agency approved OJT Program. Classroom training hours worked by apprentices who are required to be away from the job site for related training during the course of the project, but only if the apprentice is rehired by the same employer after completion of training. If the Contractor or any of its Subcontractor(s) are unable to fulfill its 20% requirement, then the affected party may also use method (b.) below.

- b. Hours worked on the project by graduates of state-registered apprenticeship programs, provided that such hours are worked within the 12-month period following the apprentice's completion date. The percentage of credit applied shall be as follows:
- 0 to 480 hours worked - 0% of total hours worked
 - 481 hours to 960 hours - 70% of total hours worked
 - 961 hours to 1,440 hours - 80% of total hours worked
 - 1,441 hours to 1,620 hours - 90% of total hours worked
 - 1,621 hours to 2,500 hours - 120% of total hours worked

Counting OJT hours - all OJT hours shall count as apprenticeship in overall project apprenticeship calculation. Exceptions will be construction assistant will not count towards OJT achievement or apprenticeship.

(C) Project Labor Agreement Apprentice Retention Requirements

1. After an apprentice has worked ten days, the Contractor or Subcontractor employing such apprentice shall provide feedback to the apprentice's dispatch source as to the performance of the apprentice (both positive and negative feedback), such feedback shall include feedback from the apprentice's direct supervisor indicating specific areas where the apprentice is excelling and needed areas for improvement.
2. If an apprentice is not meeting the expected needs of the Contractor or Subcontractor employing such apprentice, the apprentice's direct supervisor shall inform such Contractor or Subcontractor, the dispatch source, and the apprentice of needed areas for improvement. Contractors and Subcontractors shall match the expectation of apprentice performance with the stage of apprenticeship and path to journey-level worker.
3. Contractors and Subcontractors shall provide a newly dispatched apprentice a minimum "mentoring" period of three business days in an effort to teach and seek improvement in such apprentice's needed areas for improvement.
4. Following the above three-day mentoring period, the subject Prime Contractor or Subcontractor shall inform the dispatch source that the apprentice has either improved and will be retained or is not improving and will need to be replaced.
5. If an apprentice is removed from employment, the subject Prime Contractor or Subcontractor shall debrief the apprentice and the dispatch source on needed areas for improvement with the goal of providing the necessary feedback that allows the dispatcher and the apprentice to continue the apprentice's development of the skills needed to continue on the path to journey level competency.
6. The subject Contractor's or Subcontractor's hiring supervisor shall inform the dispatch source if an apprentice is relieved of duties and what follow-up action is planned (request for a new apprentice, etc.).

(D) Use Apprenticeship Programs for Referrals

A Contractor or Subcontractor(s) is encouraged to diversify its workforce through apprenticeships. See Equal Employment Opportunity Provisions.

(E) Utilize Community Organizations when Recruiting for Positions

When hiring, requesting, recruiting, or replacing workers for this project, the Contractor or Subcontractor(s) whose workforce does not reflect a diverse workforce shall:

1. Make reasonable and necessary efforts to employ a diverse workforce, especially to correct any potential EEO Employer problems; such actions may include requests for minority and female applicants. Contractors and Subcontractors are notified that direct hiring of employees (such as "walk-ons") without providing notification of that job opportunity, in accordance with paragraph (2) below, may not constitute a reasonable effort.
2. Document its employment efforts. Documentation of good faith efforts should include:
 - a. Requests to union or open shop apprenticeship programs for women and minorities.
 - b. Requests to community resources who assist Contractors with recruitment and referral of workers. Community resources include but not limited to:

CAWS: Construction Apprenticeship & Workforce Solutions, Inc.
Constructing Hope Construction Pre-Apprenticeship Program
Portland Community College Apprenticeship Program (PCC)
Portland Youth Builders Oregon Tradeswomen, Inc.
Portland Opportunities Industrial Center (POIC)
Job Corps
Chemeketa Community College / N Marion
 - c. Requests for Contractor assistance in recruiting minority or women apprentices.
 - d. Requests for a minority or woman apprentice that will be laid off with next 30 days on project.

The Agency will request documentation from Contractors and Subcontractor(s) that are not compliant with 23 CFR Part 230 Subpart C & D and other applicable parts if it appears that the Contractor or Subcontractor(s) has not made reasonable and necessary efforts to acquire a diverse workforce. The Contractor or Subcontractor(s) shall provide the documentation of its efforts every 30 days to the Agency.

SECTION 8: CONSEQUENCE OF NONCOMPLIANCE WITH WORKFORCE OJT / APPRENTICESHIP REQUIREMENTS

The parties mutually agree that failure to meet the requirements of these provisions, including but not limited to the submission of required documentation, constitutes a material breach of contract.

In the event of a breach of this section of the contract, the Agency may take any or all of the following actions, in addition to any other actions or remedies the Agency has under the Contract:

(a) Withholding Progress Payments

The Agency may withhold all or part of any progress payment or payments until the Contractor has remedied the breach of contract. In the event that progress payments are withheld, unless required by applicable law, the Contractor shall not be entitled to interest on said payments.

If a Subcontractor(s) is responsible for noncompliance with the Workforce Program requirements, the Agency may choose to withhold only their portion of the progress payment.

(b) Additional Requirements for Failure to Comply with these Provisions, including Failure by Subcontractors

The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Agency for the Contractor or its Subcontractor's failure to comply with the Workforce Specifications. The parties further agree that it is difficult, if not impossible, to determine the cost to the Agency when workforce opportunities are not provided.

(1) If a Subcontractor(s) fails to comply with the workforce provisions of this contract, the Contractor agrees to increase their apprenticeship hours equal to the hour deficit of the Subcontractor requirement of the trade / craft to make up the failure. If the Contractor does not employ such trade / Craft, laborer and or carpenters trade / craft shall be substituted for the failure hours.

(2) If the Contractor fails to meet the 20% apprenticeship training provisions at the end of the contract the Agency may assess a disincentive. Disincentives may be assessed for failure to meet the 20% apprenticeship training requirements to the prime in each trade employed.

(3) Disincentives will be calculated based on \$2,500 for every 100 apprenticeship hours not provided. The disincentive will be prorated to the nearest dollar. Disincentives are in addition to any liquidated damages that may be assessed due to any delay in the project caused by the Contractor's failure to comply with the Workforce OJT / Apprenticeship provisions of the contract and any other liquidated damages under the Contract.

SECTION 9: REPORTS

The Contractor and each Subcontractor with an Apprenticeship Training Program shall complete and submit the following reports to the Resident Engineer, according to the instructions provided in the respective forms:

- 15 Calendar Days prior to beginning construction work, ODOT Estimated Workforce Form /Form 734-5286) signed by the Contractor and Subcontractor stating estimated trades, by hours, estimated apprentices' hours, estimated new apprentices, and starting date, and proof of training agent status.
- The "Training Program Approval Request (TPAR)" (Form 734-2880) shall be submitted prior to start of Work for each Contractor or Subcontractor requesting a trainee.
- 15 Calendar Days prior to beginning the first on-site construction work, the Contractor shall perform a Workforce review of their projected project workforce. The review shall summarize current contractor workforce expected on the project, new hire(s) minorities, and women by job categories. If it is determined the Contractor or Subcontractor currently has under-representation of minorities or women, compared to the civilian workforce, the Contractor, or Subcontractor shall describe its response plan for how it intends to address the under-utilization over the life of the contract. This does not preclude agency from conducting its own EEO review.
- By the 15th of each month, a Monthly Employment and Apprenticeship Utilization Report, MEUR (Form 731-0668). This report reflects work hours by employee, craft, race and gender. This report is required of all Contractors and Subcontractors on contracts valued \$10,000 and above, regardless of their participation in the apprenticeship Program.
- The training program forecast using the "Training Program Approval Request (TPAR)" <https://portal.aashtoware.org/> shall be submitted prior to or at the preconstruction conference

AASHTOware

It is anticipated, during the Project, the ODOT Office of Equity and Civil Rights will begin using AASHTOware for the purposes of collecting and reporting federally required workforce, contracting, and subcontracting compliance data, including local agency subrecipient contracting data. The Contractor and all Subcontractors shall utilize all forms as required by this Exhibit C until notified by the Agency to transfer to the use of AASHTOware or to another AASHTOware compatible format specified by the Agency. At such time, the Contractor and Subcontractors shall update past information and maintain records of the diversity of their onsite Subcontractors and workforce to allow the owners to determine whether a project is meeting its requirement, and goals or monitor project targets. If required by the Agency, the contractor and Subcontractors shall submit this information to the Agency electronically in AASHTOware or in the Agency-specified AASHTOware compatible format via weekly certified payroll reports by the 5th of each month. Information related to the contractor's access to the system will be provided to a designated point of contact upon award of the contract or upon issuance of a signed Contract Change Order. (AASHTOware is web-based and can be accessed at the following internet address [AASHTOware.com](https://portal.aashtoware.org/))

Forms will be published on the AASHTOware's website at:
<https://portal.aashtoware.org/> or another location specified by the Agency.

SECTION 10: MONITORING AND COMPLIANCE

The Contractor has the primary responsibility to monitor compliance levels throughout the Contract and to ensure the Training/Apprentice Goal and Zip Code Hiring Requirement is met. The Contractor shall ensure that the Subcontract contains the appropriate Apprenticeship and Zip Codes Hiring clauses that obligate the Subcontractor. This shall not relieve the Contractor of the Contractor's primary responsibility.

The Contractor shall be required to perform the following actions as part of monitoring and compliance:

- Require Monthly Diversity Meeting attendance (2 hours), to include Diversity Coordinator and Project Manager. Meeting will review all contractor monthly results and Subcontractor results.
- Review monthly detailed report of Contractor and Subcontractor workforce but not limited to; apprenticeship by trade / craft, workforce diversity by trade and classification, workforce by trade, and review Zip Code Hiring results.
- Contractor and invited Subcontractor(s) shall attend monthly management meetings, monitor Subcontractor(s) diversity of workforce and Good Faith Efforts as appropriate.
- Provide a plan of action for recruiting workforce within 15 days of agency's request.
- Maintain records and submission of the reports.

If the Contractor does not comply, the Agency may withhold progress payments until compliance is achieved, or impose other lawful remedies, including holding the Contractor in breach or terminating the contract.

The Agency, through meetings and progress records provided by the Contractor, will provide the Contractor with the following compliance data:

- The Contractor's training forecasts compared with the actual Qualified Hours achieved.
- Total hours and apprenticeship.
- Total hours of Zip Code Priority Hiring achieved

The Agency will track training activities provided by Contractor for the OJT trainees, apprentices, workforce diversity and Zip Code Hiring.

The Agency may withhold progress payments, suspend the Work, or impose other lawful remedies if the Contractor fails to comply with these Federal on-the-Job ,Apprenticeship Training Contract and Workforce Priority Hiring Provisions.