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**AGENDA COVER MEMORANDUM**

Memorandum Date: 29 November 2006  
Order Date: 13 December 2006

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TO: Board of County Commissioners

DEPARTMENT: Lane County Sheriff's Office

PRESENTED BY: Judy Simpson

**AGENDA ITEM TITLE: IN THE MATTER OF APPROVING EXECUTION OF INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF OREGON, DEPARTMENT OF TRANSPORTATION AND LANE COUNTY FOR HIGH PRIORITY COMMUNICATION PROJECT IN THE AMOUNT OF \$10,010,000**

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I. MOTION

MOVE TO APPROVE THE EXECUTION OF THE INTERGOVERNMENTAL AGREEMENT WITH THE DEPARTMENT OF TRANSPORTATION FOR THE HIGH PRIORITY COMMUNICATION PROJECT

II. AGENDA ITEM SUMMARY

The Board is being asked to approve the execution of Intergovernmental Agreement (IGA) with the Department of Transportation because the total communication project cost is estimated at \$10,010,000 and will terminate upon completion of the project and final payment or ten (10) calendar years, whichever is sooner.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The project to upgrade the county-wide public safety communications system at a projected cost of \$23 Million was included in the Lane County FY 2006-2007 Budget on the List of Unmet Needs for the Sheriff's Office. The project has been on the unmet needs list for the past several years.

The federal transportation reauthorization bill Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) enacted 10 August 2005

designated funding for High Priority Project (HPP) 3565 in the amount of \$9 Million over a five-year period (federal fiscal years 2005-2009).

Funding for HPP 3565 is for upgrading the radio equipment and communications infrastructure to provide interoperability between local, state and federal emergency agencies in Lane, Linn, Benton, Douglas, Coos, Curry and Josephine Counties.

Funds will come from the Federal Highway Administration (FHWA) through the Oregon Department of Transportation (ODOT).

**B. Policy Issues**

Per Lane Manual 21.145, contracts exceeding \$100,000 and/or 3 years in length require board approval.

**C. Board Goals**

Relevant strategic plan goals are:

**B3: Allocate resources strategically**

1. The County's highest funding priority will be those services that are effective in addressing the immediate and critical life and health safety needs of our citizens. An interoperable communication system throughout Lane County will benefit its citizens during times of disasters in being able to communicate with all agencies (local, state and federal) coordinating response and rescue efforts.

2. The County will attempt to leverage its dollars as much as possible. Higher priority will be given to funding those programs where the investment of County dollars matches funds provided by federal or other governments and a County match is required in order to receive the funds.

**D. Financial and/or Resource Considerations**

The federal funds are reimbursement funds and Lane County must provide a 10.27% match. Reimbursement will be on a monthly basis.

Allowable match will be equipment Lane County and/or other counties purchase in connection with the microwave project, and time spent working on the project by the radio technicians/staff of the individual counties.

Following execution of the IGA, ODOT will coordinate and pay (from their funds) for the NEPA (National Environmental Policy Act) requirement. Each of the communication sites located in the seven counties will be analyzed for possible environmental impacts, and due to snow, earliest completion is March/April 2007. The Sheriff's Office will work

with ODOT in the preparation of an RFP for the microwave project. Once proposals have been received, actual cost of the project will be determined, probably mid-2007.

Actual total federal funding to be available will not be known until Federal Fiscal Year 2009. Under SAFETEA-LU the maximum available each fiscal year will be twenty percent of the earmark (\$1.8 Million apportioned each year). Each fiscal year the federal funds are subject to reductions for limitations in Obligation Authority and occasional Congressional rescissions.

Federal FY 2005 – federal funds limited to \$1,539,850 with \$176,243 match required. FY 2006 – federal funds subject to 1% reduction and limited to \$1,551,197 with \$177,541 match required. Match over the 5-year period appears to be approximately \$885,000.

Lane County (Sheriff's Office) has a 7-County IGA in effect – the purpose is to establish a Regional Interoperable Radio System. The system will consist of a microwave backbone to a number of communication sites within the seven counties (Linn, Benton, Douglas, Coos, Curry and Josephine) and a shared master site located in the Eugene/Springfield Metro area. In progress is a 7-County governance IGA. The counties will commit to match/project funding assistance. The funding liability and match requirement for the federal funds will be included in the governance IGA.

Lane County will be required to repay any federal funds received if not able to complete the project. Limited amount of federal funds would be received, if any, prior to award of a project contract.

Looking towards the future – other first responder agencies (Fire/EMS, law enforcement, etc.) and utility companies have expressed an interest in connecting to the microwave backbone and will pay a fee to connect, generating revenue.

#### E. Analysis

Lane County Sheriff's Office has an urgent need to establish a functioning communications network to meet existing public safety and emergency demands in order to protect lives and property.

A series of external task groups and telecommunications consultants since 1985 have recommended upgrading Lane County's emergency communications system. A microwave system will provide interoperable communications for all public safety providers, while protecting first responders in the field and allowing coordination of emergency and disaster services from the local to federal levels.

A lack of funding has required a phased approach and partnerships with other agencies in order to share the costs. Partnering with Eugene Water & Electric Board (EWEB) and receipt of a 2004 State Homeland Security Grant has resulted in building a microwave backbone for radio interoperability for agencies operating through the McKenzie River Valley and metro area.

The City of Eugene received a \$3 Million Community Oriented Policing Services Grant. Lane County has partnered with City of Eugene, EWEB and City of Springfield resulting in a digital “trunked” radio system shared by all four entities with interoperability in the Eugene/Springfield Metro area (Metro Simulcast Project).

This IGA is the result of a United Front lobbying effort to obtain a \$9 Million authorization on the transportation bill to develop interoperable communications along I-5 and US 101 between the 7-counties making up Congressman Defazio’s District.

Lane County’s partnership with US Department of Justice and Oregon State Police has secured communication facilities specific to the federal Interoperable Wireless Network-Office of Joint Projects Interstate-5 corridor plan. We will begin to realize region by region connectivity for the purpose of mutual aid and disaster level responses.

F. Alternatives/Options

Option 1. Adopt the order to authorize execution of the Intergovernmental Agreement with ODOT and receive an estimated \$9 Million towards communication interoperability.

Option 2. Do not approve the order authorizing execution of the IGA, resulting in the loss of \$9 Million federal money. Lane County will be unable to continue towards achieving communication interoperability unless other funding sources become available.

V. TIMING/IMPLEMENTATION

This IGA is time critical. Once the IGA is fully executed, ODOT will submit it to FHWA. Acceptance by FHWA denotes when federal funds can be released as reimbursement for qualified expenditures.

D. RECOMMENDATION

Staff recommends option 1. Delegate the authority to execute the IGA.

III. FOLLOW-UP

Lane County Sheriff’s Office (LCSO) will work with ODOT to ensure compliance with all federal requirements and award project contract. LCSO will work with the 7-county consortium for funding assistance.

IV. ATTACHMENTS

1. Proposed Board Order No. \_\_\_\_\_.
2. Intergovernmental Agreement between ODOT and Lane County.



**LOCAL AGENCY AGREEMENT  
HIGH PRIORITY PROJECT  
SW Oregon Traffic Incident Communication Equipment**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and Lane County, a political subdivision of the State of Oregon, hereinafter referred to as "Agency," collectively referred to as the "Parties."

**RECITALS**

1. By the authority granted in ORS 190.110, 366.572, and 366.576, State may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. Under provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which provides authorization for federal-aid highways, highway safety programs, and transit programs, and for other purposes, State is required to set aside federal funds over the five (5) years of SAFETEA-LU for High Priority Projects.

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

**TERMS OF AGREEMENT**

1. Under said provisions, Agency agrees to upgrade the radio equipment and communications infrastructure to provide interoperability between local, state and federal emergency agencies, hereinafter referred to as "Project." The locations of the Project are approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project shall be conducted as a part of the High Priority Projects Program authorized under SAFETEA-LU. The total Project cost is estimated at \$10,010,000, which is subject to change. The High Priority Projects funds authorized for the Project are estimated at \$9,000,000 with Agency providing the match for the federal funds and any non-participating costs, including all costs in excess of the available federal funds. The federal pro-rata funding for the project is 89.73 percent and provided federal funds will be subject to annual obligation limitations and possible rescissions. The funds shall be used for all phases of work on the Project. *No State Gas Tax Funds shall be used on this Project.*

3. The High Priority Projects Number and Project Description are as shown in the table below:

High Priority Projects Number	Project Description
3565	Purchase communications equipment related to traffic incident management in Linn, Benton, Lane, Douglas, Coos, Curry and Josephine Counties

4. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at Agency expense. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205.
5. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. The attached Special Provisions may contain additional termination conditions.
6. This Agreement may be terminated by mutual written consent of the Parties.
7. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is

prohibited or State is prohibited from paying for such work from the planned funding source.

- f. Agency may terminate this Agreement upon written notice to State, if federal laws, regulations or guidelines are modified or interpreted by the FHWA or court in such a way that Agency's work under this agreement is prohibited.
8. Upon termination, neither party shall have further obligation to complete the Project under this Agreement. However, any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
9. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
10. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for its breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon such breach of any condition that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
11. Nothing in this agreement shall be construed to cause or require either party to act in violation of state or federal constitutions, statutes, regulations or rules.
12. Agency shall enter into and execute this Agreement as approved during a duly authorized session of its Board of County Commissioners.
13. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
14. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either



party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

This Project is in the 2006-2009 Statewide Transportation Improvement Program (STIP), (Key No. 15260) that was approved by the Oregon Transportation Commission on August 17, 2005.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

**Signature Page to Follow**

Lane County/ODOT  
Agreement No.23747

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission or in a line item in the biennial budget approved by the Director.

**LANE COUNTY**

By \_\_\_\_\_  
County Administrator

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
County Counsel

Date \_\_\_\_\_

Agency contact:  
William A. Van Vactor  
County Administrator  
125 East 8th Avenue  
Eugene, OR 97401  
Phone: (541) 682-4203

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

By \_\_\_\_\_  
Deputy Director, Highways

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief Engineer

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**ATTACHMENT NO. 1 TO AGREEMENT # 23747  
SPECIAL PROVISIONS**

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments.
2. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered under this Agreement, Agency and Consultant shall enter into a Personal Services Contract approved by State's Office of Procurement Manager or designee (Salem). Said contract must be reviewed and approved by the Office of Procurement Manager or designee prior to beginning any work. This review includes, but is not limited to the Request for Proposal, Statement of Work, advertisement and all contract documents. This review and approval is required to ensure federal reimbursement.
3. State may make available Region 2's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
4. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, the Project cost is defined as the engineer's estimate plus 10 percent.
5. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
6. Agency shall, upon completion of Project and as a condition to this Agreement, complete and file with the appropriate County Clerk, an Acknowledgment of Federal Assistance, which is attached hereto as Exhibit B, and by this reference is made a part hereof. Agency shall provide confirmation of this filing by forwarding to the Region 2 Manager a conformed copy of the recorded Exhibit B. By means of said acknowledgment, a lien shall be established against said property and assets subject to the satisfaction of Agency's financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation and/or

demand. State's interest in said property is proportional to the federal and state participation in Project.

7. Agency understands that the federal funding is allocated over a five-year period. If Agency wishes to construct the Project prior to the fifth year, which is Federal Fiscal Year 2009, Agency shall deposit sufficient funds to State to cover all Project costs in excess of currently available federal funds. As federal funds become available, Agency will be reimbursed that portion of the advance deposit. These funds must be deposited per Paragraph 24 of the Standard Provisions.
8. Maintenance and power responsibilities shall survive any termination of this Agreement.

EXHIBIT B

Agreement Number: 23747  
SW Oregon Traffic Incident Communication Equipment  
Key Number: 15260

ACKNOWLEDGMENT OF FEDERAL ASSISTANCE

The property and assets under the jurisdiction of **Lane County** were improved with assistance from the United States Government under an Agreement executed between **Lane County** and the Oregon Department of Transportation dated \_\_\_\_\_. Such assistance was provided to **Lane County** in reimbursement of costs associated with the **SW Oregon Traffic Incident Communication Equipment project**.

The use and disposition of said property is subject to the terms of the above noted Agreement, copies of which may be obtained from the Director, Oregon Department of Transportation, and is also subject to 49 CFR Part 18 which may be obtained from the Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, S.W., Washington D.C. 20590.

By : \_\_\_\_\_

Title : \_\_\_\_\_

SUBSCRIBED and SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

NOTARY PUBLIC FOR OREGON

My commission expires: \_\_\_\_\_

## **ATTACHMENT NO. 2**

### **STANDARD PROVISIONS**

#### **JOINT OBLIGATIONS**

##### **PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

##### **PRELIMINARY & CONSTRUCTION ENGINEERING**

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

## REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification to USDOT Agency of its failure to carry out the approved program, shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; OMB CIRCULAR NO. A-87 and NO. A-133 Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

### STATE OBLIGATIONS

#### PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid**

**participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

## **FINANCE**

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

## **PROJECT ACTIVITIES**

12. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
13. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
14. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
15. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
16. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.



## **RIGHT-OF-WAY**

17. State is responsible for proper acquisition of the necessary right-of-way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right-of-way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
18. Regardless of who acquires or performs any of the right-of-way activities, a right-of-way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right-of-way, and providing oversight and monitoring. Funding authorization requests for federal right-of-way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right-of-way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right-of-way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
19. State shall review all right-of-way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right-of-way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS 35.510 and ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
20. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
21. Agency insures that all Project right-of-way monumentation will be conducted in conformance with ORS 209.150.
22. State and Agency grants each other authority to enter onto the other's right-of-way for the performance of the Project.

## **AGENCY OBLIGATIONS**

### **FINANCE**

23. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
24. Agency's estimated share and advance deposit.
  - A. Agency shall, prior to commencement of the preliminary engineering and/or right-of-way acquisition phases, deposit with State its estimated share of each phase. Exception may be made

in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

- B. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within 45 days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within 45 days of receipt by State of the Project sponsor's written request.
  - C. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
  - D. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
25. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
26. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
27. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
28. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.

29. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
30. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering 2) last payment for right-of-way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
31. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of three (3) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
32. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right-of-way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
  - b) Right-of-way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right-of-way acquisition.
  - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
33. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

## **RAILROADS**

34. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR 646B & Title 23 CFR 140I, shall be included in the total Project

costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

## UTILITIES

35. Agency shall cause to be relocated or reconstructed, all privately or publicly-owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements of the Project. Only those utility relocations, which are eligible for federal-aid participation under, Title 23 CFR 645A, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than 21 weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
36. Agency shall follow established State utility relocation policy and procedures. The policy and procedures are available through the appropriate State's Region Utility Specialist or State's Right of Way Section Railroad Liaison, and Utility Engineer.

## STANDARDS

37. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
38. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
39. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
40. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.
41. The standard unit of measurement for all aspects of the Project may be either System International (SI) Units (metric), or English Units. However, all Project documents and products shall be in one or the other unit of measurement. This includes, but is not limited to, right-of-way, environmental documents, plans and specifications, and utilities. It should be recognized that the State is currently transitioning to English, and will be completely English by 2006.

## **GRADE CHANGE LIABILITY**

42. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
43. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
44. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

## **CONTRACTOR CLAIMS**

45. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
46. Notwithstanding the foregoing defense obligations under paragraph 45, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

## **MAINTENANCE RESPONSIBILITIES**

47. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

## **WORKERS' COMPENSATION COVERAGE**

48. All employers, including Agency that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

## **LOBBYING RESTRICTIONS**

49. Agency certifies by signing the Agreement that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- E. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 35, 36, and 47 are not applicable to any local agency on state highway projects.