

**AGREEMENT FOR SERVICES
INTERGOVERNMENTAL AGREEMENT
Industrial Property Road Improvements
Columbia Development Authority (CDA)**

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" or "ODOT," and the Columbia Development Authority (CDA), hereinafter referred to as "CDA," both herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, a state agency may enter into agreements with units of local government and intergovernmental entities for the performance of any or all functions and activities that state agency, its officers, or agents have the authority to perform.
2. This Agreement is between ODOT and The Columbia Development Authority (CDA), which is an intergovernmental entity created pursuant to ORS 190.003 to ORS 190.085 and ORS 190.110, and an intergovernmental agreement executed on August 12, 2014. The CDA is comprised of the following agencies: Morrow County and Umatilla County, both political subdivisions of the State of Oregon, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), a Federally recognized Indian Tribe, and the Port of Morrow, and the Port of Umatilla, both port districts and municipal corporations of the State of Oregon. The group was formally known as the Local Redevelopment Authority (LRA). The CDA's purposes include overseeing the development of an economic diversification strategy and development of economic opportunities through the transition of portions of the former Umatilla Army Depot Area from military to civilian uses.
3. The United States Army ("Army") intends to convey to the CDA 9511.37 acres of the former Umatilla Army Depot, a depiction and vicinity map of which are included herein as Exhibit A, which is referred to herein as the "Property." The United States Army - National Guard Bureau will retain ownership of the portions of the former Umatilla Army Depot not conveyed to the CDA. The Oregon Military Department ("OMD") is the licensee of the Army - National Guard Bureau.

The Parties therefore agree as follows:

TERMS OF AGREEMENT

1. Under such authority, State and CDA agree that CDA shall design and construct roadways within the Property that will connect to the Westland Road Interchange, at Exit

CDA/ODOT/State
Agreement No.73000-00003436

10 off of Interstate 82 (I-82) as further depicted in Exhibit A, ("Project"). The Project shall include constructing access roads within the Property. The location of the Project is as described and shown in attached "Exhibit A".

2. The Project will be financed at an estimated cost of \$7,000,000 in state funding (the "Funds"), which consists of Preliminary Engineering Funds and Construction Funds. CDA shall be responsible for any nonparticipating costs, and Project costs beyond the estimate.
 - a. Preliminary Engineering Funds shall be released to CDA upon CDA securing a right of entry to the Property from the Army or upon transfer of the Property ownership from the Army to the CDA, whichever occurs first.
 - b. Construction funding shall be released to CDA upon transfer of the Property ownership from the Army to the CDA and review and approval of Project plans by State.
3. The Parties' obligations under this Agreement are contingent upon the following occurring: (1) CDA securing a right of entry from the Army Depot, and (2) transfer of the Property from the Army to the CDA. In the event that one or both of these events does not occur, ODOT may terminate the Agreement.
4. Upon request to ODOT and with written approval from ODOT, CDA may hire a consultant or contractor to help deliver the Project, consistent with the requirements of this Agreement.
5. **Exhibits Attached and Incorporated.**
 - c. This Agreement includes the following exhibits, each of which is attached and incorporated into this Agreement by reference:
 - Exhibit TCD –Terms, Conditions and Definitions
 - Exhibit A – Project Description and Vicinity Map
6. **Order of Precedence.** Unless a different order is required by law, this Agreement shall be interpreted in the following order of precedence:
 - 1) This Agreement (including all amendments, if any) less all Exhibits, attachments and other documents and information incorporated into this Agreement,
 - 2) Exhibit TCD,
 - 3) Exhibit A, Project Description and Vicinity Map,
 - 4) Any other attachments,
 - 5) Any documents/information incorporated into this Agreement by reference.

This provision survives expiration or termination of the Agreement.

7. **Term of Agreement; Effective Date.** This Agreement shall become effective on the date all required signatures are obtained and shall terminate upon final payment of the Project. Project construction shall be completed by December 31, 2027, including all final payments and project closeout requirements. Maintenance obligations shall survive termination of this Agreement.

CDA OBLIGATIONS

1. CDA shall construct the Project as described in Paragraph 1 of Terms of Agreement.
2. If it has not yet assumed ownership of the Property, CDA shall obtain permission to enter and work on the Property from the Army prior to starting Preliminary Engineering work. CDA shall obtain written documentation from the Army to verify its right of entry.
3. CDA shall submit invoices for the eligible actual costs incurred on behalf of the Project directly to State's Project Manager/State Contact listed in this Agreement for review and approval. Such invoices shall be in a form identifying the Project, key number, the Agreement number, the Project phase and amount charged to each (such as preliminary engineering, right of way, and construction), the invoice number, and will itemize all expenses for which reimbursement is claimed. Invoices shall be presented for periods greater than one month, based on actual expenses incurred and must clearly specify the percentage of completion of the Project. CDA shall also include with the invoice a Project progress report or summary that describes work accomplished for the period being invoiced and work expected for the next invoicing period. Project related travel expenses shall be reimbursed in accordance with the current State of Oregon Department of Administrative Services rates.
4. CDA shall be responsible for securing the conveyance of the Property from the Army to CDA. CDA shall notify State upon transfer of the Property from the Army to CDA.
5. CDA shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete Project.
6. CDA shall submit all of the following items to the State Contact, at Project completion and prior to final payment:

- a. Final Project Completion Inspection Form 734-5063 (completed with State Contact)
 - b. Final Cost; and
 - c. As-Constructed Drawings
 - d. Confirmation that road system is dedicated for public use.
7. Once the Property has been conveyed to CDA, the Parties do not anticipate that any additional right of way will need to be acquired for this Project; however, should right of way acquisition become necessary, State and CDA shall enter into a separate Right of Way Services Agreement. Any ROW acquisition will be done in accordance with state statute.
8. **Americans with Disabilities Act Compliance:**
 - a. **State Highway: For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):**
 - i. CDA shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. CDA shall follow ODOT's processes for design, construction, or alteration_of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, CDA shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
 - iv. CDA shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by CDA and prior to release of any CDA contractor.

- v. CDA shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. CDA shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.
- b. Local Roads: For portions of the Project located on property or facilities that are not on or along a state highway:

- i. CDA shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
- ii. CDA may follow the processes of Morrow County or Umatilla County, or may use ODOT's processes, for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Agency's use and convenience.

- iii. CDA assumes sole responsibility for ensuring that the Project complies with the ADA, including when CDA uses ODOT forms and processes. CDA acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
- iv. CDA shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. CDA shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.

- c. CDA shall ensure that any portions of the Project under CDA's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, CDA ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by CDA identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. CDA, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
 - d. Maintenance obligations in this section shall survive termination of this Agreement.
9. Upon completion of the Project, CDA shall at its own expense, maintain, operate, and provide power as needed on the improvements made as part of this Agreement, at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. State and CDA agree that the useful life of this Project is defined as seventy-five (75) years. Maintenance and power responsibilities shall survive any termination of the Agreement. No work is anticipated on ODOT right of way other than minor work to tie the Project in to the existing highway. Should any other Project features need to be installed or constructed on ODOT right of way, then CDA and ODOT shall either amend this Agreement or enter into a separate Agreement to address construction and maintenance obligations; prior to work being done.
10. CDA shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, CDA expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142;

(iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

11. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:
- a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.
 - b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of a road authority, whether that permission is expressed or implied, and whether written or oral.
12. If CDA enters into a construction contract for performance of work for the Project, then CDA will include provisions in that contract requiring its contractor to comply with the following:
- a. Contractor and CDA shall name State as a third party beneficiary of the resulting contract.
 - b. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage.
Coverage shall be written on an occurrence basis in an amount of not less than
 \$1,000,000 \$2,000,000 \$5,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$1,000,000 \$2,000,000
 \$4,000,000 10,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles for bodily injury and property. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Combined single limit per occurrence shall not be less than \$1,000,000.

- e. Additional Insured Endorsement. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under the resulting contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of the resulting contract and shall be grounds for immediate termination of the resulting contract and this Agreement.
13. CDA covenants and agrees that, in the event of the dissolution of the CDA, CDA shall not assign any debts, liabilities, or obligations arising under or related to this Agreement to CTUIR, unless CTUIR first executes a limited waiver of sovereign immunity in a form acceptable to State that enables State to enforce this Agreement directly against CTUIR.
14. CDA's Project Manager for this Agreement is Greg Smith, CDA Director, PO Box 200, Boardman, Oregon 97818. Phone: (541) 481-3693. columbiadirector@gmail.com, or assigned designee upon individual's absence.

STATE OBLIGATIONS

- 1. State shall allow CDA to enter onto State right of way, in order for CDA to perform duties set forth in this Agreement. CDA shall obtain a miscellaneous permit to occupy State right of way through the State District 12 Office prior to entering State right of way.
- 2. State shall reimburse CDA eligible costs for the Project, up to the maximum amount of state funds committed for the Project, in Terms of Agreement, Paragraph 2 of this Agreement. Reimbursements shall be made by State within forty-five (45) days of State's approval of a request for reimbursement from CDA, except that final payment will be withheld until the State's Project Manager has completed final project inspection and project acceptance.
- 3. State shall release Preliminary Engineering (PE) Funds and Construction (CON) Funds to CDA as provided in Terms of Agreement Paragraph 2.
- 4. State's Contact for this Project is: Project Manager/State Contact, Michelle Tragesser, Oregon Department of Transportation, 3012 Island Avenue, La Grande, Oregon 97850. Phone: (541) 963-1353, michelle.tragesser@odot.oregon.gov, or assigned designee upon individual's absence.

GENERAL OBLIGATIONS

1. **Termination.** This Agreement may be terminated by mutual written consent of all Parties. State may terminate this Agreement effective upon delivery of written notice to CDA, or at such later date as may be established by State, under any of the following conditions:
 - i. If CDA fails to provide the services called for by this Agreement within the time specified herein or any extension thereof.
 - ii. If CDA 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. State shall specify the number of days in the written notice.
 - iii. 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 fund its obligations for performance of this Agreement.
 - iv. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such services from the planned funding source.
 - v. CDA fails to secure a right of entry from the Army.
 - vi. The transfer of the Property from the Army to the CDA does not occur.
- a. Any termination of this Agreement shall not extinguish or prejudice any rights or obligations accrued to the Parties prior to termination.
2. **Certification.** Each Party certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on its behalf, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind that Party.
3. **No Substitutions or Assignments.** CDA shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of State. State's consent to any subcontract (or other delegation of duties) does not relieve CDA of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the Parties, and, except as otherwise provided, their permitted legal successors and assigns.

4. **No Third Party Beneficiaries.** CDA and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. This provision survives termination of the Agreement.
5. **Waiver; Amendment.** 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. This provision survives termination of the Agreement.
6. **Notice.** Except as otherwise expressly provided in this Agreement, all notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's designated contact at the physical address or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this paragraph. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective when the sender receives confirmation of receipt from the recipient (not an auto-reply). Except as set forth above in this paragraph, the Parties may agree to provide operational notices such as delivery, acceptance or rejection of services or deliverables by email as may be mutually agreed.
7. **Severability.** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. This provision survives termination of the Agreement.
8. **Counterparts.** This Agreement may be executed in several counterparts 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.
9. **Integration.** 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.

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

CDA, by and through its

By 
Director

Date: September 28, 2022

CDA Contact:

Greg Smith, CDA Director
PO Box 200
Boardman, Oregon 97818
(541) 481-3693
columbiadirector@gmail.com

State Contact:

Michelle Tragesser, Project Manager/State
Contact
Oregon Department of Transportation 3012
Island Avenue
La Grande, Oregon 97850
(541) 963-1353
michelle.tragesser@odot.oregon.gov

STATE OF OREGON, by and through
its Department of Transportation

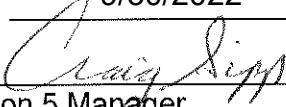
By 
Director

Date 10/5/2022

APPROVAL RECOMMENDED

By 
State Traffic/Roadway Engineer

Date 9/30/2022

By 
Region 5 Manager

Date 9/29/2022

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Jennifer O'Brien Via Email Dated
Assistant Attorney General

Date 8/22/2022

EXHIBIT TCD – TERMS, CONDITIONS AND DEFINITIONS

THIRD PARTY CLAIMS: The following paragraphs 1 through 4 shall survive termination of the Agreement.

1. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or CDA with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
2. With respect to a Third Party Claim for which State is jointly liable with CDA (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by CDA in such proportion as is appropriate to reflect the relative fault of State on the one hand and of CDA on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of CDA on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
3. With respect to a Third Party Claim for which CDA is jointly liable with State (or would be if joined in the Third Party Claim), CDA shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of CDA on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of CDA on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. CDA's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

4. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

RECORDS

The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party. This provision survives termination of the Agreement.

INDEPENDENT CONTRACTOR; EMPLOYMENT COSTS

1. CDA shall perform the services under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
2. State reserves the right (i) to determine and modify the delivery schedule for the services and (ii) to evaluate the quality of the services; however, State may not and will not control the means or manner of CDA's performance. CDA is responsible for determining the appropriate means and manner of performing the services.
3. CDA understands and agrees that it is not an "officer," "employee," or "agent" of the State of Oregon, as those terms are used in ORS 30.265 or otherwise.

WORKERS COMP

All employers, including the CDA and CDA's contractors, if any, that employ subject workers, as defined in ORS 656.027, who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and shall provide the required Workers' Compensation Insurance coverage, unless such employers are exempt under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 for each accident. CDA shall ensure that each of its contractors complies with these requirements.

SUBCONTRACTOR REQUIREMENTS & INDEMNIFICATION

1. CDA shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including

attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of CDA's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.

2. Any such indemnification shall also provide that neither CDA's contractor or subcontractor nor any attorney engaged by CDA's contractor or subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that CDA's contractor or subcontractor is prohibited from defending the State of Oregon, or that CDA's contractor or subcontractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against CDA's contractor or subcontractor if the State of Oregon elects to assume its own defense.
3. CDA shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.

RIGHT OF ENTRY

1. CDA grants State the right to enter onto CDA right of way for the performance of duties as set forth in this Agreement.
2. State grants CDA the right to enter onto State right of way for the performance of duties as set forth in this Agreement.
3. CDA shall obtain a miscellaneous permit to occupy State right of way through the State District 12 Office prior to entering State right of way.

GOVERNING LAW; VENUE; CONSENT TO JURISDICTION:

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. Any claim, action, suit or proceeding (collectively, "Claim") between the State and CDA that arises from or relates to the Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CDA HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon. This provision survives termination of the Agreement.

COMPLIANCE WITH LAW

CDA shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, CDA expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations

NON-APPROPRIATION

The State of Oregon's payment obligations under this Agreement are conditioned upon ODOT's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. CDA is not entitled to receive payment under this Agreement from any part of Oregon state government other than ODOT. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. This provision survives termination of the Agreement.

REMEDIES

1. CDA default.
 - a. In the event CDA is in default under this Agreement, ODOT may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (i) termination of this Agreement, (ii) reducing or withholding payment for work or deliverables that CDA has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, including for interest within the limits of ORS 293.462, and (iv) exercise of its right of recovery of overpayments under this Agreement or setoff, or both.
 - b. These remedies are cumulative to the extent the remedies are not inconsistent, and ODOT may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
2. ODOT default.
 - a. In the event ODOT is in default under this Agreement or in the event ODOT terminates this Agreement, CDA's sole remedy under the specific circumstances identified in 2.a.i and 2.a.ii will be:
 - i. For work compensable at a stated rate: A claim for unpaid invoices for work completed according to the requirements and acceptance criteria of this Agreement and for authorized expenses incurred and interest within the limits of ORS 293.462, less any claims ODOT has against CDA,
 - ii. For deliverable-based work: A claim for the sum designated for completing the deliverable multiplied by the percentage of work completed and accepted by CDA, plus authorized expenses incurred, and interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims ODOT has against CDA.
 - b. In no event will ODOT be liable to CDA for any expenses related to termination of this Agreement, including attorney fees. If previous amounts paid to CDA exceed the amount due to CDA, CDA shall promptly pay any excess to ODOT.
3. The rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies at law or in equity.
4. This provision survives termination of the Agreement.

CDA/ODOT/State
Agreement No.73000-00003436

EXHIBIT A
PROJECT DESCRIPTION AND VICINITY MAP
PROJECT: Industrial Property Road Improvements

CDA shall construct improvements on the Property beginning near Army Depot Exit 10 off of Interstate 82 (I-82). CDA shall construct a road extending west from the I-82 interchange to the depot entrance, and west along the southern border of the CDA Property toward the southwest corner of the CDA Property, as far as funds permit. Construction shall include intersection modifications slightly due west of the existing I-82 Exit 10 southbound off-ramp and constructing access roads into the Interstate Industrial Park.

Construction shall be completed by the deadline identified in Terms of Agreement Paragraph 7.

PROJECT LOCATION MAP

The Project location is shown by the colored areas on the following map. The white line depicts the Project limits. The red line depicts the roadway.

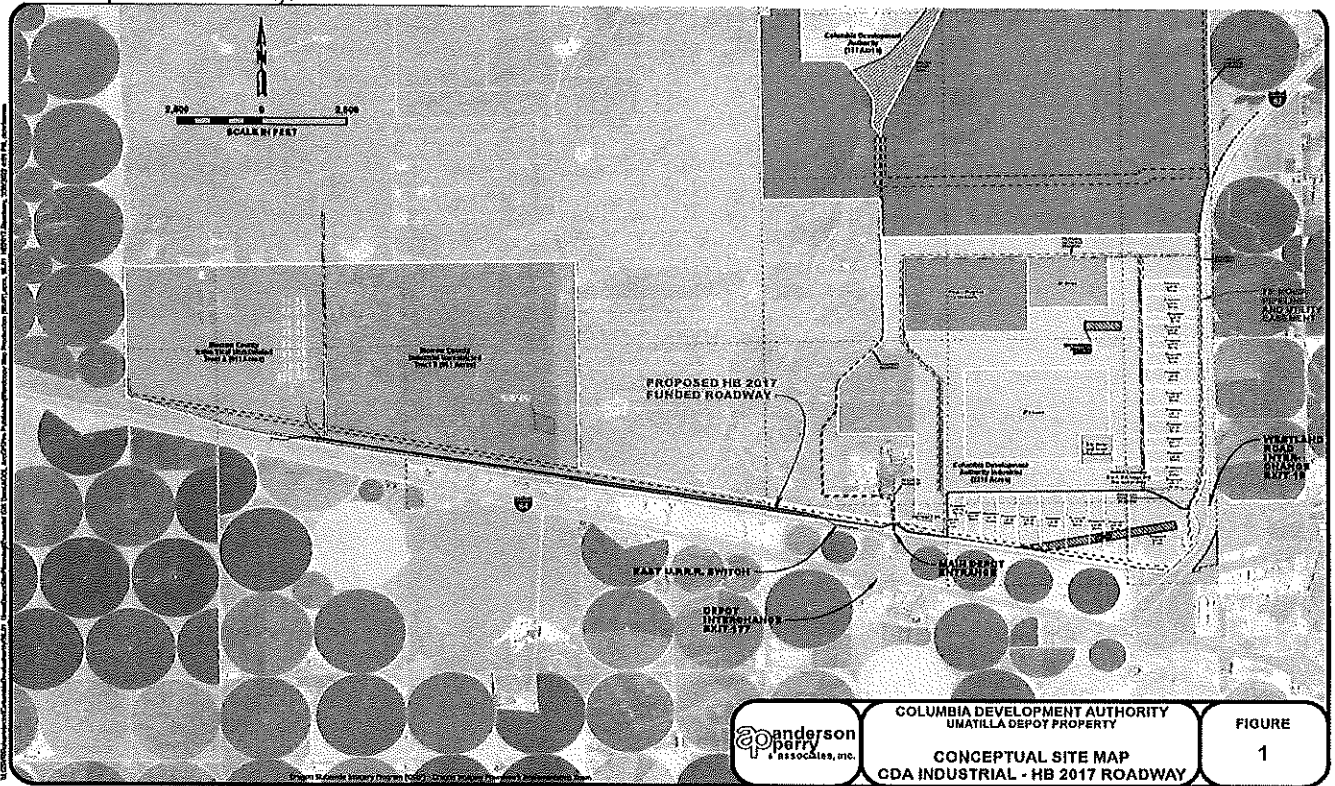


EXHIBIT B - COMPENSATION AND PAYMENT PROVISIONS

CDA OBLIGATIONS

1. CDA shall present invoices for 100 percent of Eligible Costs incurred by CDA on behalf of the Project directly to State's project manager for review and approval. Under no conditions shall State's obligations exceed \$7,000,000 including all expenses.
 - a. Such invoices shall be in a form identifying the Project and agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one month duration, based on actual expenses incurred.

Eligible Costs are reasonable and necessary actual costs incurred by the CDA in performance of the Project, and which comply with the requirements of Article IX, Section 3a of the Oregon Constitution.
 - b. Project related travel expenses shall be reimbursed in accordance with the current State of Oregon Department of Administrative Services rates.
2. If CDA makes a written request for the cancellation of the Project, CDA shall bear one hundred (100) percent of all costs incurred as of the date of cancellation if CDA is the sole cause of the cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all eligible costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or CDA, the State shall pay all outstanding costs and contract services incurred in the normal course of the Project, and which it would otherwise be required to reimburse under the terms of this Agreement. CDA shall bear all of its own costs and State shall bear any State administrative costs incurred prior to cancellation of the Project.
3. If ODOT terminates this Agreement under General Obligations Paragraph 1 Subsections i, ii, or vi, CDA shall bear one hundred (100) percent of all costs incurred as of the date of termination.

STATE OBLIGATIONS

1. State agrees to reimburse CDA for Eligible Costs within forty-five (45) days of receipt and approval by State of monthly Project invoices. State agrees to pay CDA a maximum amount of \$7,000,000. Said maximum amount shall include reimbursement for all expenses. Travel Expenses will not be reimbursed.