

**Project Name**  
**County**  
**Contract No.**

**Third Party Neutral Confidentiality Agreement**

ODOT and \_\_\_\_\_, "Contractor" have entered into Contract # \_\_\_\_\_, which contains provisions for the agreed use of a Third Party Neutral (TPN) to review and attempt to resolve issues issued between ODOT and Contractor. ODOT and Contractor have agreed to initiate the TPN process. For purposes of ORS 36.220 through 36.238 and OAR 731-001-0720, the TPN process is considered to be mediation. In order to address confidentiality of issues related to mediation involving a state agency, a confidentiality agreement between the parties is necessary.

1. Mediation in this context is a process in which a Third Party Neutral assists and facilitates two or more participants to an issue in reaching a mutually acceptable resolution of the issue. The TPN will act as an impartial intermediary and will not act as an advocate for any party. The TPN is not acting as a judge and has no authority to force a settlement on the participants. The TPN will submit a recommended solution only with the consent of the participants.
2. Participation in mediation is voluntary; any participant may withdraw from or suspend the TPN process at any time for any reason. The participants agree to act in "good faith" in the TPN process and to work toward a satisfactory agreement. "Good faith" means an affirmative duty to listen to the concerns and suggestions of the other participants and to communicate honestly and with integrity. Good faith also means that participants come to with sufficient authority to negotiate an agreement.
3. Participants agree to use \_\_\_\_\_ as the third party neutral for the subject project.
4. Each participant should consult with his or her own legal counsel regarding the potential risks and benefits of participating in the TPN process. The participants are encouraged to secure independent legal advice throughout the TPN process and should obtain independent legal review before signing any formal mediated agreement.
5. All applicable Oregon statutes and rules govern this agreement, TPN process and any agreement resulting from the TPN.
6. Discoverability, Admissibility, Confidentiality of Communications:
  - a. The participants will not subpoena the TPN or otherwise require the TPN to produce records, notes or work product or to testify in any future proceedings as to information disclosed or representations made in the course of the TPN process, except to the extent such information is not confidential or may be disclosed pursuant to ORS 36.220, 36.222 or OAR 731-001-0720. In the event any participant causes the TPN to be served with a subpoena or other process in violation of this clause, such participant shall pay the TPN's reasonable costs, expenses and fees, including attorneys fees, related to the violation.
  - b. With respect to matters in litigation, and as provided in the Oregon Evidence Code, Rule 408, evidence of an offer to compromise a claim is not receivable into evidence as an admission of either the validity or the invalidity of the claim. Additionally, evidence of conduct or any statement made in compromise negotiations, as well as the offer or completed compromise itself, is not admissible.
  - c. Disclosure to the TPN of information covered by the attorney-client privilege does not waive the privilege.
  - d. A stenographic or tape record may be made of any mediation session upon the agreement of ODOT and Contractor.

