

RFP 730-34626-21 Attachment B Sample Contract

State of Oregon – Department of Transportation

Contract for Services

CONTRACT #: _____

WEST COAST ELECTRIC HIGHWAY

Contract includes federal funds: Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	No DBE Goal Assigned
Certified Small Business Aspirational Target (for State-only funded and will exceed \$100,000, including as amended; see Exhibit H)	N/A
Expenditure Account (EA) #: _____	Agency Key # : N/A

This Contract for Services (this “Contract”) is by and between the State of Oregon, acting through its **Oregon Department of Transportation** (“Agency” or “ODOT”) and _____, (“Contractor”) and is effective as of the Effective Date.

Name: Address: Phone: Fax: Email:	Agency’s Contract Administrator for this Contract: _____@odot.state.or.us	Name: Address: Phone: Fax: Email:	Contractor’s Contract Administrator for this Contract: _____@_____.com
	Agency’s Project Manager (if different than Contract Administrator) [this information is optional]		Alternate Contact for Contractor [this information is optional]

Either party may change its Contract Administrator by providing the other notice in compliance with Section 17.6 of this Contract.

1. Contract Term.

This Contract shall become effective on the date this Contract has been signed by every party hereto and, when required, approved by the Department of Justice. Unless terminated or extended, this Contract shall expire on [the fifth anniversary of the date on which all of the WCEH charging stations to be upgraded and operated pursuant to this Contract have been commissioned]. The term of this Contract may be extended for additional periods by execution of a written amendment extending the foregoing termination date. Expiration shall not extinguish or prejudice Agency’s right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.

2. Contract Documents. This Contract consists of the following documents, which are listed in descending order of precedence:

- 2.1. this Contract less all exhibits and Attachments;
- 2.2. Exhibit D (Federal Terms and Conditions);
- 2.3. Exhibit C (Special Terms and Conditions);
- 2.4. Exhibit A (Statement of Work);
- 2.5. Exhibit B (Required Insurance);
- 2.6. Exhibit E (Independent Contractor Certification);
- 2.7. Exhibit F (Compensation Provisions);
- 2.8. Exhibit G (Title VI, Non-Discrimination Provisions);
- 2.9. Attachment A to the Statement of Work (Oregon West Coast Electric Highway Technical Specifications for DCFC and Level 2 EVSE and Requirements for Operation);
- 2.10. Attachment B to the Statement of Work (West Coast Electric Highway Non-Exclusive Trademark License Agreement, which includes Oregon West Coast Electric Highway Requirements for Use of WCEH Branding and Logo); and
- 2.11. Attachment C to the Statement of Work (Oregon West Coast Electric Highway Recommended Host Site Attributes and Selection Criteria).

The foregoing documents and Exhibits are attached hereto and made a part of the Contract by this reference.

3. Services.

- 3.1. Performance of Services.** Contractor shall perform the services (the “Services”) and deliver to Agency the deliverables (“Deliverables”) set forth in Exhibit A, the Statement of Work (the “Statement of Work”). The Statement of Work includes the delivery schedule for the Deliverables and Services. Contractor shall perform the Services in accordance with the terms and conditions of this Contract.
- 3.2. Submission and Acceptance of Deliverables.** When the Statement of Work requires Contractor to deliver Deliverables to Agency, then Contractor shall deliver Deliverables that comply with the requirements and acceptance criteria set forth in the Statement of Work. Contractor shall provide written notice to Agency upon delivery of a completed Deliverables to Agency. By no later than (i) 15 business days after receipt of such notice, or (ii) the date or period for review set forth in the Statement of Work, Agency will determine whether the Deliverables has the characteristics and otherwise meets the acceptance criteria set forth in the Statement of Work. If Agency determines that the Deliverables has the characteristics and meets acceptance criteria set forth in the Statement of Work in all material respects, Agency will notify Contractor in writing of Agency’s acceptance of the Deliverables.
- 3.3. Rejection of Deliverables; Corrections.** If Agency determines that a Deliverables does not have the characteristics or otherwise meet the acceptance criteria set forth in the Statement of Work in all material respects, Agency will notify Contractor in writing of Agency’s rejection of the Deliverables, and describe in reasonable detail in such notice the Agency’s basis for rejection of the Deliverables.

Upon receipt of notice of non-acceptance, Contractor shall, within a 15 business day period, modify or improve the Deliverables at Contractor's sole expense so that the Deliverables has the characteristics described in the Statement of Work and meets, in all material respects, the acceptance criteria, and notify the Agency in writing that it has completed such modifications or improvements and re-tender the Deliverables to Agency. Agency will thereafter review the modified or improved Deliverables within 15 business days of receipt of the Contractor's delivery of the Deliverables. Failure of the Deliverables to have the characteristics or meet in all material respects the acceptance criteria set forth in the Statement of Work after the second submission will constitute a default by Contractor. In the event of such default, Agency may either, (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverables as set forth in this Section, or (ii) notify Contractor of such default and pursue its remedies for default provided for by law or the terms of this Contract.

4. Compensation.

- 4.1. Not to Exceed Compensation.** The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$_____ (excluding the Contractor Match specified in Exhibit F). Agency will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract, and will not pay for Services performed before the Effective Date or after the expiration or termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Services subject to the amendment. The payment methodology, basis for payment, invoice requirements and other provisions related to Contractor compensation are set forth in Exhibit F, Compensation.
- 4.2. Payments.** Payments, including interim payments, to Contractor are subject to ORS 293.462, will be made only for completed and accepted Deliverables and Services, and will be made in accordance with the payment schedule and requirements set forth in the Statement of Work.
- 4.3. Invoices.** Contractor shall submit invoices to Agency as set forth in the Statement of Work or, if not set forth therein, to Agency's Contract Administrator. Contractor may submit invoices in accordance with the payment schedule set forth in the Statement of Work or, if no payment schedule is set forth therein, then no more frequently than once per month for accepted Deliverables and Services. The invoices must describe all Services performed with particularity, including the dates Contractor performed the Services for which it is requesting payment, and by whom the Services were performed and shall itemize and explain all expenses that this Contract requires Agency to pay and for which Contractor claims reimbursement. Each invoice must also include the total amount invoiced to date by Contractor prior to the current invoice. Contractor will specifically note in the appropriate invoice when it has requested payment for one-third and two-thirds of the maximum, not-to-exceed compensation.
- 4.4. Expenses.** Agency will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in the Statement Work or elsewhere in this Contract. Any such authorized travel expenses must comply with the Oregon Travel Policy available on the Internet at: <https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>
- 4.5. Funds Available and Authorized.** Contractor will not be compensated for Services performed under this Contract by any agency or department of the State of Oregon other than Agency. Agency believes it has sufficient funds currently available and authorized for expenditure to make payments under this Contract within Agency's biennial appropriation or limitation. Contractor understands and agrees that Agency's payments under this Contract are contingent on Agency receiving

appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

5. Contractor's Personnel.

5.1. Key Persons. Contractor acknowledges and agrees that Agency selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's key persons identified in the Statement of Work (each a "Key Person" and, together, "Key Persons"). Neither Contractor nor a Key Person may delegate performance of the powers and responsibilities that a Key Person is required to provide under this Contract to another Contractor employee, subcontractor or agent without first obtaining the written consent of Agency. Further, Contractor may not re-assign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the Agency with the required expertise, experience, judgment, and personal attention, without first obtaining Agency's written consent to such re-assignment or transfer, which Agency will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace a Key Person in the event the Key Person is no longer available due to circumstances beyond Contractor's reasonable control, such as death, illness, or termination of employment with Contractor. In the event Contractor requests that Agency approve a re-assignment or transfer of a Key Person, or if Contractor must replace a Key Person, Agency may interview, review the qualifications of, and approve or reject the proposed replacement for the Key Person. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by Agency in writing (email acceptable) will thereafter be deemed a Key Person for purposes of this Contract, and the Statement of Work will be deemed amended to include such Key Person.

5.2. Payment for Replacement Key Personnel. If Agency is paying Contractor on an hourly or other periodic basis, then Contractor will not charge Agency, and Agency will not pay, for a replacement Key Person while such replacement acquires the project knowledge and skills necessary to perform the Services. Such period of non-charge will be agreed upon by the parties.

5.3. State Premises. Contractor and Contractor staff shall comply with all policies, rules, procedures, and regulations established by Agency and the State for access to and activities in and around premises controlled by Agency or any other agency of the State.

6. Independent Contractor; Responsibility For Taxes And Withholding

6.1. Independent Contractor. Contractor shall perform all Services as an independent contractor. Agency reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, Agency may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

6.2. No Conflicts. Contractor, by signature to this Contract, represents and warrants that Contractor's performance of the Services under this Contract creates no potential or actual conflict of interest as defined by ORS 244; and no statutes, rules or regulations of any State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor from performing the Services under this Contract.

6.3. Affiliation. Contractor 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.

6.4. Taxes and Benefits. Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless required by applicable law, Agency will not withhold from such compensation or payments any amount to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual. Throughout the duration of the Contract, Contractor shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) to Agency whenever Contractor's backup withholding status or any other information on the form changes.

7. Subcontracts, Successors, And Assignments

7.1. Subcontracts. Contractor shall not enter into any subcontracts for any of the Services required by this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were Contractor. Agency's consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Contract.

7.2. Successors and Assigns. The provisions of this Contract are binding upon and inure to the benefit of the parties to this Contract, their respective successors, and permitted assigns, if any.

7.3. No Assignment. Contractor shall not assign or transfer any of its rights or delegate its obligations under this Contract without Agency's prior written consent.

8. Representations and Warranties.

8.1. Contractor's General Representations and Warranties. Contractor represents and warrants to Agency that:

8.1.1. Contractor has the power and authority to enter into and perform this Contract;

8.1.2. The Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;

8.1.3. Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services;

8.1.4. Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and

8.1.5. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the Effective Date, faithfully has complied with:

8.1.5.1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

8.1.5.2. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;

8.1.5.3. Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and

8.1.5.4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

8.1.6. Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

8.2. Contractor's Performance Warranties.

8.2.1. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor shall apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession;

8.2.2. The Services and each Deliverables delivered by Contractor pursuant to the Services will materially comply with any service descriptions, specifications, standards or requirements set forth in this Contract;

8.2.3. Except as otherwise provided in this Contract (including Section 9), Contractor shall transfer all Deliverables to Agency free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind; and

8.2.4. Except as otherwise set forth in this Contract, any subcontractors performing work for Contractor under this Contract have assigned all of their rights in the Deliverables to Contractor or Agency and no third party has any right, title or interest in any Deliverables supplied to Agency under this Contract.

8.3. Warranties cumulative. The warranties set forth in Section 8 are in addition to, and not in lieu of, any other warranties set forth elsewhere in this Contract.

9. Ownership of Work Product.

9.1. Definitions. As used in this Section 9, and elsewhere in this Contract, the following terms have the meanings set forth below:

9.1.1. "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Services.

9.1.2. "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.

9.1.3. "Work Product" means everything that is originally made, conceived, discovered, or reduced to practice by Contractor or Contractor's subcontractors or agents (either alone or with others) pursuant to this Contract, including every invention, modification, discovery, design, development, customization, configuration, improvement, process, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection).

9.2. Original Works. All Work Product created by Contractor pursuant to the Services, including derivative works and compilations of Work Product, and whether or not such Work Product is considered a work made for hire or an employment to invent, is the exclusive property of Agency. Agency and

Contractor agree that such Work Product is “work made for hire” of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the Work Product is not “work made for hire,” Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency’s reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Agency. Contractor forever waives any and all rights relating to Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

9.3. License in Contractor Intellectual Property. In the event that a Deliverable delivered by Contractor under this Contract is or is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Deliverable, and to authorize others to do the same on Agency’s behalf.

9.4. License in Third Party Intellectual Property. In the event that a Deliverable delivered by Contractor under this Contract is or is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the Agency’s behalf and in the name of the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Deliverable, and to authorize others to do the same on Agency’s behalf.

9.5. No Rights. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by Agency. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Agency any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.

9.6. Marks. Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.

9.7. Competing Services. Subject to the provisions of this Section 9, and Contractor’s obligations with respect to Confidential Information, including as defined in Section 10, nothing in this Contract precludes or limits in any way the right of Contractor to: (i) provide services similar to those contemplated in this Contract, or consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, Deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables delivered pursuant to this Contract. Each party is free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under this Contract free of any use restriction or payment obligation to the other.

10. Confidential Information.

10.1. Confidential Information. Contractor acknowledges that it and its employees, officers, directors, agents or subcontractors (collectively, “Contractor Staff”) may, in the course of performing the

Services under this Contract, be exposed to or acquire information that is confidential to Agency or Agency's clients. Any and all information of any form (including but not limited to records, files, papers, materials, documents, and communications in written, verbal, oral and electronic form) that Contractor or any Contractor Staff may come into contact with or that is obtained by Contractor or Contractor Staff in the performance of this Contract shall be considered for the purposes of this Contract the confidential information of Agency ("Confidential Information"). Contractor shall, and shall cause Contractor Staff to treat any reports or other documents or items (including software) that result from the use of the Confidential Information in the same manner as the Confidential Information. Confidential Information does not include information that (i) is or becomes (other than by disclosure by Contractor or Contractor Staff acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by Contractor or Contractor Staff who can be shown to have had no access to the Confidential Information.

10.2. Non-Disclosure. Contractor shall hold, and shall cause Contractor Staff to hold, all Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer, distribute, or otherwise dispose of, give, make available or disclose, in whole or in part, directly or indirectly, Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to Agency hereunder, and shall advise Contractor Staff of their obligations to keep Confidential Information confidential. Contractor shall assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Agency immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract, and Contractor will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Contractor against any such person. Contractor shall not at any time during or after the term of this Contract, except as directed by Agency, disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract. Upon expiration or termination of this Contract or at Agency's request, Contractor shall deliver to Agency all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Contract, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.

10.3. Confidentiality Policies. Contractor shall, upon Agency's request, provide its policies and procedures for safeguarding Confidential Information to Agency for Agency's review and consent. Such policies must address information conveyed in oral, written, and electronic format and include procedures for how Contractor will respond when a violation or possible violation occurs.

10.4. Injunctive Relief. Contractor acknowledges that breach of this Section 10, including disclosure of any Confidential Information, will cause irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

10.5. Publicity. Contractor agrees that it will not disclose the form, content or existence of this Contract or any Deliverables in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with Agency or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Agency or the State of Oregon of Contractor's Services, without the prior written consent of Agency.

11. Indemnity by Contractor.

11.1. Claims. Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs (including attorneys' fees) and expenses (collectively, "Claims") of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under or relating to this Contract, including but not limited to, unauthorized disclosure of Confidential Information, professional malfeasance, infringement of intellectual property rights, intentional, willful, or wanton wrongful acts, and acts outside the scope of Services set forth in this Contract.

11.2. Legal Counsel. If Contractor is required to defend the State of Oregon or Agency or their officers, employees or agents under Section 11.1, then Contractor shall select legal counsel reasonably acceptable to the Oregon Attorney General to act in the name of, or represent the interests of, the State of Oregon, Agency or their officers, employees and agents. Such legal counsel must accept appointment as a special assistant attorney general under ORS chapter 180 before such action or representation. Further, the State of Oregon, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State of Oregon's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State of Oregon or its officers, employees and agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State of Oregon are served thereby. Contractor's obligation to pay for all costs and expenses includes those incurred by the State of Oregon in assuming its own defense or that of its officers, employees, and agents under (i) and (ii) above.

11.3. Damages to State Property and Employees. Contractor is liable for all Claims for personal injury, including death, damage to real property and damage to tangible and intangible personal property of the State of Oregon or any of its employees, subcontractors or agents resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract.

11.4. CONTRACTOR IS NOT AUTHORIZED TO SETTLE OR COMPROMISE ANY CLAIM REFERENCED IN THIS SECTION WITHOUT THE EXPRESS WRITTEN CONSENT OF AGENCY.

12. Limitation of Liabilities.

12.1. EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, CONTRACTOR'S LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO ONE AND ONE HALF TIMES THE MAXIMUM-NOT-TO-EXCEED AMOUNT OF THIS CONTRACT.

12.2. EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

13. Insurance. Contractor shall maintain insurance as set forth in Exhibit B.

14. Default; Remedies; Termination.

14.1. Default by Contractor. Contractor will be in default under this Contract if:

14.1.1. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

14.1.2. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within 14 calendar days after Agency's notice or such longer period as Agency may specify in such notice; or

14.1.3. Contractor commits any material breach or default of any covenant, warranty, obligation, certification, or agreement under this Contract, fails to perform the Services under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice, or such longer period as Agency may specify in such notice; or

14.1.4. Contractor has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State.

14.2. Agency's Remedies for Contractor's Default. In the event Contractor is in default under Section 14.1, Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

14.2.1. Termination of this Contract under Section 14.6.2; or

14.2.2. Withholding all monies due for Services and Deliverables that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively; or

14.2.3. Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or

14.2.4. Exercise of its right of setoff, and withholding of amounts otherwise due and owing to Contractor, without penalty; or

14.2.5. Undertaking collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after the Contractor has been given notice if required by law.

14.3. Remedies Cumulative. The remedies set forth in Section 14.2 are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections 14.1, then Contractor will be entitled to the same remedies as if this Contract was terminated pursuant to Section 14.6.1.

14.4. Default by Agency. Agency will be in default under this Contract if:

14.4.1. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or

14.4.2. Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

14.5. Contractor's Remedies. In the event Agency terminates this Contract under Section 14.6.1, or is in default under Section 14.4, and whether or not Contractor elects to exercise its right to terminate the Contract under Section 14.6.3, Contractor's sole monetary remedy will be (i) with respect to Services compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced and authorized expenses incurred and interest, subject to ORS 293.462, and (ii) with respect to Deliverables-based Services, a claim for the sum designated for completing the Deliverables multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Contractor. In no event will Agency be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 14.5, Contractor shall pay immediately any excess to Agency upon written demand.

14.6. Termination.

14.6.1. Agency's Right to Terminate at its Discretion. Agency may terminate this Contract:

14.6.1.1. Upon 30 calendar days' prior written notice by Agency to Contractor;

14.6.1.2. Immediately upon written notice by Agency to Contractor if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Services or Work Products; or

14.6.1.3. Immediately upon written notice by Agency to Contractor if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency's purchase of the Services or Work Products under this Contract is prohibited or Agency is prohibited from paying for such Services or Work Products from the planned funding source.

14.6.2. Agency's Right to Terminate for Cause. In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract immediately upon written notice by Agency to Contractor, or at such later date as Agency may establish in such notice, if Contractor is in default under Section 14.1.

14.6.3. Contractor's Right to Terminate for Cause. Contractor may terminate this Contract immediately upon written notice to Agency, or at such later date as Contractor may establish in such notice, if Agency is in default under Section 14.4.

14.7. Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation any Services or Work Products for which Agency has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time.

14.8. Effect of Termination. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such

notice of termination. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Services and the Deliverables.

15. Compliance with Law.

15.1. Compliance with Law Generally. Contractor shall comply, and cause all subcontractors to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract and the performance of the Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

15.2. Compliance with Oregon Tax Laws.

15.2.1. Contractor shall, throughout the duration of this Contract, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes the tax laws described in Section 8.1.5.1 through 8.1.5.4.

15.2.2. Any violation of Section 15.2.1 constitutes a material breach of this Contract. Further, any violation of Contractor's warranty in Section 8.1.5 of this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also constitutes a material breach of this Contract. Any violation entitles Agency to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

15.2.2.1. Termination of this Contract, in whole or in part;

15.2.2.2. Exercise of the right of setoff, or garnishment if applicable, and withholding of amounts otherwise due and owing to Contractor without penalty; and

15.2.2.3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Agency is entitled to recover any and all damages suffered as the result of

Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services.

15.2.3. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

15.3. Compliance with Federal Law. Contractor shall comply with all applicable federal laws, including, without limitation, those set forth in Exhibit D, which is attached and incorporated into this Contract by this reference.

15.4. Pay Equity. As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and shall not discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character, the performance of which requires comparable skills, or pay any employee at a rate less than another for comparable work, based on an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor's compliance with this section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles Agency to terminate this Contract for cause.

Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

16. Governing Law; Venue and Jurisdiction.

16.1. Governing Law. This Contract is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

16.2. Venue and Jurisdiction. Any claim, action, suit or proceeding between Agency (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. In no event may this section be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim, action, suit or proceeding, or (ii) consent by the State of Oregon to the jurisdiction of any court.

17. Miscellaneous Provisions.

17.1. Records Maintenance; Access. Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract ("Records") in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government including, but not limited to the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States and their duly authorized representatives will have access to such financial records and other Records that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and

audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records and other Records for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

- 17.2. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to entering into this Contract.
- 17.3. Force Majeure.** Neither Agency nor Contractor may be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 17.4. Survival.** All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 17.4, and provisions regarding Contract definitions, warranties and liabilities, independent Contractor status and taxes and withholding, maximum compensation, Contractor's duties of confidentiality, ownership and license of intellectual property and Deliverables, confidentiality and non-disclosure, Contractor's representations and warranties, control of defense and settlement, remedies, return of Agency property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.
- 17.5. Time is of the Essence.** Contractor agrees that time is of the essence under this Contract.
- 17.6. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the email address, postal address or telephone number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 17.6. Any communication or notice so addressed and mailed is effective five business days after mailing. Any communication or notice delivered by facsimile is effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice given by personal delivery is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by demonstrating through other technological means that the email has been delivered to the intended email address.
- 17.7. No Third Party Beneficiaries.** Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or may be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

17.8. Severability. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

17.9. Merger Clause; Waiver. This Contract 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 Contract. No waiver, consent, modification or change of terms of this Contract will bind the parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract in one instance will not constitute a waiver by Agency of its right to enforce that or any other provision.

17.10. Amendments. Agency may amend this Contract to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract is effective unless it is in writing signed by the parties, and has been approved as required by applicable law.

17.10.1. **Changes via Electronic Amendment.** The following amendments to this Contract, when such amendments do not include changes to scope of work or not-to-exceed amount of the Contract, may be accomplished by electronic amendment (sent via e-mail) that documents agreement by Contractor and Agency:

- The addition of or change in Contractor's subcontractors approved by Agency;
- The addition of or changes to billing rate schedules for Contractor and its subcontractors;
- Revisions to delivery schedule and Contract expiration date.
- Revisions to designated Contract Administrator.

17.11. Counterparts. This Contract may be executed in several counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed constitutes an original.

17.12. Oregon False Claims Act. Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Contract, including the procurement process relating to this Contract, that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or Agency under this Contract or any other provision of law.

17.13. Certifications. The individual signing on behalf of Contractor (the undersigned) hereby:

17.13.1. Certifies and swears under penalty of perjury to the best of the undersigned's knowledge that: (a) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (b) the undersigned is authorized to act on behalf of Contractor, the undersigned

has authority and knowledge regarding Contractor's payment of taxes, and to the best of the undersigned's knowledge, Contractor is not in violation of any Oregon tax laws and that for a period of no fewer than 6 calendar years preceding the Effective Date of this Contract, Contractor faithfully has complied with: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; (c) Contractor is an independent contractor as defined in ORS 670.600; and (d) the supplied Contractor tax identification numbers are true and accurate.

- 17.13.2. Certifies that, to the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against any disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns or emerging small business certified under ORS 200.055 in obtaining any required subcontracts.
- 17.13.3. Certifies that the information provided on the attached Exhibit E, Independent Contractor Certification, is true and correct as of the Effective Date.
- 17.13.4. Certifies that Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.
- 17.13.5. Certifies that Contractor has a written policy and practice that meets the requirements described in ORS 279A.112, of preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of the Contract, to maintain the policy and practice in force during the entire Contract term (see [additional information and sample policy template](#)).
- 17.13.6. Certifies that Contractor has read this Contract, understands it, and agrees to be bound by its terms and conditions.
- 17.13.7. Certifies that: (a) Contractor understands and has provided to all Associates the ODOT COI Guidelines, and Contractor and to the best of its information, knowledge and belief, its Associates are in compliance with the **ODOT Conflict of Interest Guidelines** (as may be revised from time to time) available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>, and (b) if submittal of a Conflict of Interest Disclosure Form is required, the information Contractor provided through the Conflict of Interest Disclosure Form is true, accurate and complete as of the Contract Effective Date. In addition, Contractor shall submit to Agency a true, accurate and complete Conflict of Interest Disclosure Form, in the form required by Agency, no later than 10 business days following the date Contractor becomes aware of any staffing, organizational or other material changes that result in nonconformance with disclosure requirements of the ODOT Conflict of Interest Guidelines.
- 17.13.8. Certifies that in the event that Contractor is a general partnership or joint venture, Contractor signature(s) on this Contract constitutes certifications to the above statements

pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

- 17.13.9. Certifies that: **(a)** No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, the undersigned shall complete and submit [Standard Form-LLL, "Disclosure Form to Report Lobbying,"](#) in accordance with its instructions.
- (c)** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (d)** Contractor shall require that the language of this certification be included in all subcontracts in excess of \$100,000 at all tiers and that all such subcontractors shall certify and disclose accordingly.

SIGNATURES

No Payment shall be made for Services that are performed before all necessary governmental approvals have been obtained, the Contract is fully executed, and Notice-To-Proceed has been issued by Agency.

Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Contract and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. Agency reserves the right at any time to require the submission of the hard copy originals of any documents.

CONTRACTOR

By: _____ Title: _____ Date: _____

By: _____ Title: _____ Date: _____
(2nd signature if necessary for Contractor)

DOJ REVIEW: Reviewed by _____ via email dated _____

Oregon Transportation Commission (OTC) REVIEW: Approved via email dated _____

AGENCY (Procurement Authority)

Signature

Print Name

Date

AGENCY (Expenditure Decision Authority)

Signature

Print Name

Date

Exhibit A

Statement of Work (“SOW”)

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

To better serve Oregon drivers of Electric Vehicles (EVs), the Oregon Legislature and the Oregon Transportation Commission are providing funding to upgrade and enhance Oregon’s current network of 44 West Coast Electric Highway (WCEH) charging stations with a minimum of one new dual head Direct Current Fast Charger (DCFC) at each site that provides both CHAdeMO and SAE Combined Charging System (CCS-1) J1772 DC fast charging capability and one new Level 2 charger at each site. Contractor shall offer turnkey services to update Oregon’s WCEH network by:

- 1) Installing new DCFC and Level 2 charging equipment that offers a minimum of one dual-head DCFC with both CHAdeMO and CCS-1 J1772 DC fast charging capability (50 kW or higher output) and one Level 2 EVSE AC J1772 charger (7.2 kW or higher output) at each of the 44 current WCEH sites (or proposed new sites), removing and replacing existing equipment where present;
- 2) Enhancing each of Oregon’s 44 current WCEH sites by improving network capabilities and offering additional features or amenities or incorporating such network capabilities, features and amenities at proposed new sites;
- 3) Acquiring new DCFC and Level 2 EVSE for WCEH sites, and installing, operating, servicing, meeting reporting requirements and maintaining these sites over five or more years following the commissioning of the sites.

The Oregon Department of Transportation is committed to maintaining service to active EV drivers who have come to rely upon the WCEH throughout Oregon, while expanding the WCEH’s utility and capability. Contractor shall install new, upgraded DCFC and Level 2 EVSE at each of the 44 current Oregon WCEH sites (or install new, updated DCFC and Level 2 EVSE charging capability at new sites in each community, at locations that meet host site selection criteria), ensuring continued networked EV charging capability in each of the 44 communities currently being served by WCEH charging stations.

WCEH charging stations will be located at either existing sites or new host sites within each of the communities in which the current 44 sites are located, and the Contractor shall provide ongoing reports, maintenance and support for 5 years following the commissioning of all of the charging stations. If Contractor currently owns existing WCEH charging stations, Contractor shall be required to remove and replace existing charging equipment at each location with new, updated DCFC and Level 2 charging equipment, and maintain continuous operations to serve each of the current 44 communities, provided that Contractor may propose new locations in lieu of existing locations (and shall remove existing equipment at locations no longer deemed to be part of its network, meeting the terms of host site agreements for restoring current locations to prior conditions). If Contractor does not own current WCEH charging stations, then new DCFC and Level 2 charging equipment that meets updated requirements must be installed at new host site locations and Contractor shall not be responsible for any actions regarding the pre-existing WCEH charging stations.

Scope of Work

The work to be performed under this Contract includes hardware, software and related equipment and infrastructure to install, maintain, service, report on and operate DCFC and Level 2 EVSE at charging stations; site selection (where appropriate), design (where appropriate), engineering, construction and installation of DCFC and

Level 2 EVSE at charging stations; network operations; and reporting, maintenance and support throughout the period of installation (expected to span approximately 18 - 24 months), as well as ongoing operations, maintenance, reporting and repair for 5 years following the completion of upgrades/installation and commissioning of all of the charging stations.

The Oregon West Coast Electric Highway must be owned and operated by a single entity. Each of the 44 WCEH sites (or alternate sites) must include a minimum of one dual-head DCFC 50 kW (or higher kW) networked charger offering both CHAdeMO and CCS J1772-DCFC capability, and one Level 2 J1772 7.2 kW (or higher) charger, meeting requirements outlined in Section 2.3 (Requirements) of the Request for Proposal No. 730-34626-21 pursuant to which this Contract was awarded and in Attachment A to this Statement of Work, *Technical Specifications for DCFC and Level 2 EVSE and Requirements for Operations*.

In addition:

At 4 or more select sites, Contractor shall install at least one dual-head CHAdeMO and CCS DCFC that offers 150 kW (or higher) power level.

At 4 or more select sites, Contractor shall (i) install more than one DCFC 50 kW dual-head CHAdeMO and CCS DCFC (or higher power level), or (ii) incorporate resiliency options such as solar power; a combination of solar power and battery storage; battery storage; or other community resiliency capabilities that can be utilized by the local community as a power source for emergency functions.

All sites must incorporate installation of conduit capable of powering DCFC at 150kW power levels (or higher) for every DCFC at each of the 44 charging station sites.

In addition to the requirements referenced above, the Contractor must meet the following requirements:

- (a) At four or more select sites, the Contractor shall install at least one dual-head CHAdeMO and CCS DCFC that offers 150 kW (or higher) power level.
- (b) At four or more select sites, the Contractor shall (i) install more than one DCFC 50 kW dual-head CHAdeMO and CCS DCFC (or higher power level), or (ii) incorporate resiliency options such as solar power; a combination of solar power and battery storage; battery storage; or other community resiliency capabilities that can be utilized by the local community as a power source for emergency functions.
- (c) All sites must incorporate installation of conduit capable of powering DCFC at 150kW power levels (or higher) for every DCFC at each of the 44 charging station sites.
- (d) All Oregon WCEH charging stations must comply with the provisions for use of the WCEH branding and logo, including those requirements noted in the Washington State Department of Transportation (WSDOT) WCEH Non-Exclusive Trademark License Agreement, Requirements for Use of WCEH Branding and Logo (attached hereto as Attachment B). These include provisions pertaining to host site adherence to applicable laws, host site charging locations, charging station accessibility and availability, charging equipment offerings, operations and maintenance, payment options, customer service, highway and on-site signage, and adherence to the style guide for use of the WCEH logo and brand, among other practices.

- (e) Contractor shall execute the Washington State Department of Transportation's (WSDOT's) WCEH Non-Exclusive Trademark License Agreement and adhere to all of the provisions of such agreement in order to continue to use the West Coast Electric Highway brand and logo.

General Requirements

Contractor shall:

- Manage and facilitate all facets of the project that are reasonably within Contractor's control to ensure the project is completed on or ahead of schedule and within budget;
- Apprise Agency throughout the project of any issues or decisions that may impact the project schedule or budget;
- Use recycled/recyclable products to the maximum extent economically feasible in the performance of this Contract; and
- Embody sound and cost-effective sustainability principles in the Services performed under this Contract consistent with the provisions of the Oregon Sustainability Act (2001 HB 3948) that are included in ORS 184.421-.423.

Acronyms and Definitions

AC: Alternating Current, an electric current that periodically reverses direction.

AC is commonly found in buildings such as homes and offices as 110/120 volt (Level 1) or 208/240 volt (Level 2) power, and outlets using AC provide power for EV charging at Level 1 and Level 2.

Agency: The Oregon Department of Transportation (also referred to as "ODOT").

CCS or CCS-1: Combined Charging System, also known as SAE Combo Charging System CCS-1 J1772, a type of special electrical connector and standard used for DC fast charging, adopted by most North American and European automobile manufacturers for use with their battery electric vehicles. CCS-1 is the specific standard adopted for use in the United States of America.

Charging Network: Also referred to as "networked charging", is a data management system utilized by DCFC and Level 2 Electric Vehicle Supply Equipment and connected via cellular, WIFI, or other form of connection that allows for remote, centralized management, diagnostics and data collection.

CHAdeMO: A type of special electrical connector and standard used in DC fast charging of certain battery electric vehicles, often used by EVs manufactured by Nissan.

Commissioning: The commissioning of chargers is typically be done by a certified engineer, and ensures that all systems are safe and functional prior to the initiation of public EV charger operation. The charger is checked both for safety and functionality and may become connected to a service cloud, to enable remote servicing in the future. After commissioning the chargers at a particular site, the charging station may become operational.

Contractor: means the Person with whom an Agency enters into a Contract.

DCFC: Direct Current Fast Charger – a high power (50 kW to 350 kW+), fast charging method used to resupply an EV battery, typically using 480 V (volt) three-phase Direct Current electricity.

Electric Supply: The supply of electricity to an EV via EVSE or DCFC.

EV: Electric Vehicle – any vehicle that operates, either partially or exclusively, on electrical energy from an off-board source that is stored on-board, providing power for motion.

EVSE: Electric Vehicle Supply Equipment – sometimes referred to as an EV charging station, an EV charger or EV charging infrastructure. EVSE comprise fueling infrastructure that supply electric energy to recharge electric vehicles including battery electric, plug-in hybrid electric, and neighborhood electric vehicles. In this RFP, the term “EVSE” is used most frequently to refer to equipment to charge EVs at Level 2 (versus DCFC equipment). However, the term EVSE may, in some contexts, refer to both DCFC and Level 2 charging equipment.

Host Site Agreements: Agreements with site owners, governing bodies, utilities, and third-party vendors obtained by Contractor in order to obtain full entitlement to operate a charging station on host site as required under this Contract.

Level 1: Level 1 EV charging equipment provides electricity for EV charging through a 110/120 V (volt) single phase AC (Alternating Current) outlet and includes a standard household outlet.

Level 2: Level 2 EV charging equipment provides electricity for EV charging using a higher-output 208 or 240 V (volt) single phase AC (Alternating Current) power source, similar to that which is used for a clothes dryer or an oven.

Match Share: “Match Share” or “Match funding” means cash or in-kind (non-cash) contributions provided by the Proposer. Match Share percentage is calculated by dividing the Total Match Share by the Total Allowable Project Costs. A minimum Match Share of cash/in-kind in the amount of 20% of the Total Allowable Project Cost is required for this project (prior to allowable reductions in Match Share, as outlined in Section 4.4 (Added Value including Cash/In-Kind Contributions) of the RFP). “Total Allowable Project Cost” is the sum of ODOT’s share of the grant funds and Proposer’s cash/in-kind contribution Match Share.

OpenADR: It is an open, highly secure, and two-way information exchange model and Smart Grid standard that enables utilities and aggregators to better implement Demand Response (DR) programs and Distributed Energy Resources (DER), to cost-effectively manage growing energy demand and decentralized energy production.

OCPI: Open Charge Point Interface (OCPI) is a standard communications protocol that enables the back-end network of charging stations (including the charging stations installed or upgraded under this Contract) to exchange consumer billing data information with other networks, enabling universal roaming.

OCPP: Open Charge Point Protocol (OCPP) is an open communication protocol that allows EV charging stations and central management software to communicate with each other, enabling interoperability between charging stations, vehicles, and station providers. Adherence to OCPP should enable EVSE providers to switch networks without technological, contractual or other unreasonable restrictions.

Period of Installation: The period of installation is expected to comprise approximately 18 - 24 months during which time all of the current WCEH existing sites, proposed new sites, or a combination thereof will have new DCFC and Level 2 EVSE charging equipment installed, commissioned and ready for operation.

Public Electric Vehicle Charging Station: Each of Oregon’s WCEH existing sites, or future proposed sites, must meet the definition of a “public electric vehicle charging station,” which means an electric vehicle charging station located at a publicly available parking space. “Publicly available parking space” means a parking space that has been designated by a property owner or a lessee to be available to, and accessible to, the public, and may include on-street parking spaces and parking spaces in surface lots or parking garages; provided, however, that “publicly available parking space” shall not include a space that is part of or associated with a private residence or a parking space that is reserved for the exclusive use of an individual driver or vehicle or for a group of drivers of vehicles, including employees, tenants, visitors, or residents of a common interest development or residents of an adjacent building.

RFP: Request for Proposal No. 730-34626-21.

SAE: Society of Automotive Engineers, a professional and standards–making body that developed the J1772 connector standard for Level 1 and Level 2 charging, and expanded upon the J1772 connector standard to create the DC fast charging CCS standard.

WSDOT: Washington State Department of Transportation.

WCEH: West Coast Electric Highway.

ZEV: Zero Emission Vehicle, an electric vehicle (for the purposes of this RFP, the intended user of the WCEH is a plug-in electric light-duty car, Sport Utility Vehicle or light-duty truck) that produces no tailpipe emissions when operating on electricity. ZEVs may comprise three types of electric vehicles: Plug-in hybrid electric vehicles (PHEVs) that combine a conventional gasoline-powered engine with a battery that can be recharged by electricity from the grid; Battery electric vehicles (BEVs) that operate solely on electricity that can be recharged from the electric grid, and; Hydrogen Fuel Cell Electric Vehicles (FCEVs) that run on electricity produced from a fuel cell using hydrogen gas.

B. STANDARDS and GENERAL REQUIREMENTS

1. Standards

- **Development or Maintenance of Websites or Web Content** - Contractor shall perform all web-related Services required under this Contract in conformance with the **ODOT Web Standards** (available at: <https://www.oregon.gov/ODOT/Pages/Web-Toolkit.aspx>), which are incorporated into this Contract with the same force and effect as though fully set forth herein. ODOT shall have ownership and control of Work Products developed by Contractor as set forth in the Ownership of Work Product terms and conditions of the Contract.
- **ODOT Communications Standards**
For any Consultant tasks that require communications functions on behalf of Agency, Consultant shall comply with the ODOT Communications Standards (available at: <https://www.oregon.gov/ODOT/Pages/Web->

[Toolkit.aspx](#)) which are incorporated into this Contract with the same force and effect as though fully set forth herein.

2. Software Requirements

Contractor's software shall produce Deliverables that are fully compatible, readable and useable by Agency software, requiring no modification or translation of Contractor's Deliverables.

3. Licenses, Registrations and Qualifications

See Attachments A, B and C to this SOW.

4. General Requirements

- Agency's Project Manager (APM), or such other individual identified in specific tasks or as designated in writing to Contractor, is the primary contact on behalf of Agency for this project.
- To the extent possible, all transmittals from Contractor to Agency must include the Contract # and project name.
- Contractor shall represent project and Agency in an appropriate and professional manner in public.

C. REVIEW, COMMENT and SCHEDULE OVERVIEW

- Contractor shall coordinate with Agency staff as necessary and shall revise draft Deliverables to incorporate Agency review comments.
- Contractor shall incorporate comments within 10 business days from receipt by Agency and return the revised Deliverables to Agency staff, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by Agency.

D. FORMAT REQUIREMENTS

- Contractor shall submit draft and final Deliverables in electronic format via email (and hard copy if requested).
- Contractor shall also submit any graphic files accompanying reports separately in .jpg or .tif formats unless specified differently by Agency.
- Each draft and final text-based or spreadsheet-based Deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with version used by Agency.
- Additional format requirements may be listed with specific tasks/Deliverables throughout this Statement of Work ("SOW") or in the Contract.

E. TASKS, DELIVERABLES and SCHEDULE

Timelines will be determined during the Contract negotiation process, but are expected to enable upgrades for all Oregon public WCEH charging stations within an estimated 18 - 24 month period of installation.

Task Objectives and Deliverables

The Contractor Project Manager ("PM") shall work closely with Agency's Project Manager ("APM"), and ODOT management and staff to achieve consensus before proceeding to the next task as outlined in the project requirements. Target dates to accomplish each Task will be developed during Contract negotiations, but will seek to adhere to the expectation of approximately 18 - 24 months for the period of installation, and 5 years of operation,

reporting, service and maintenance support following the installation and final commissioning of all WCEH charging stations.

TASK 1 – PROJECT MANAGEMENT AND REPORTING

1.1 Project Management

Contractor shall provide complete project management, oversight and reporting for all elements related to information technology, equipment provision and performance, installation and construction services, marketing, accounting, production and operations. Contractor is responsible for the timely and *on budget* performance of all employees and sub-contractors.

Contractor shall manage and track the project budget against actual and projected expenditures, and provide quarterly expenditure-to-overall project budget reports to ODOT. Management reports must be provided, on a monthly basis, that track compliance and deviations, and identify areas for corrective action. Contractor shall provide or allow access to ODOT to reports that track shipment and follow the progress of individual installations. The management report for each month must be submitted by the 10th day of the immediately following month.

Contractor shall maintain frequent and concise communications with ODOT by establishing response timelines, redundant confirmation procedures, reminder notices, and strong documentation procedures throughout the period of installation and the ongoing 5 years of operation, reporting, service and maintenance support that follows the commissioning of all WCEH charging stations.

Contractor shall manage and serve as the point of contact for interaction with Host Site(s) necessary to:

- a. obtain full entitlement (through agreements, permits, consents, etc.) to operate the WCEH charging stations as required under the Contract;
- b. develop a program schedule;
- c. coordinate bids, awards, and work efforts of construction contractors and original equipment manufacturers;
- d. coordinate materials delivery;
- e. coordinate utilities and telecommunications; and
- f. provide quality control and close-out services in support of this project.

Deliverables: Quarterly *expenditure-to-overall project budget* reports (due by the 10th day of the month immediately following the reported quarter; monthly project management reports (due by the 10th day of the month immediately following the month covered in the report).

Schedule: No later than 10 days after the end of the previous calendar quarter.

1.2 Project Management Task Report

At the conclusion of each task outlined in this section, Contractor shall present a written task report to APM. If the submitted task reports are satisfactory, preliminary approval will be given by ODOT for work to continue to the next task. Final approval of each task will reside with ODOT.

Contractor shall provide all financial, budget and expenditure information as needed or requested by ODOT.

Contractor shall provide ongoing information and reporting on:

- a. the monthly number and type of EV charging sessions initiated at each location (i.e., for each DCFC or Level 2 EVSE charging equipment, per site);

- b. the monthly energy dispensed at each location (by DCFC and separately by Level 2 EVSE charging);
- c. the aggregate WCEH network-wide use by consumers of each payment mechanism to pay for charging;
- d. reports to the U.S. Department of Energy's Alternate Fuel Data Center;
- e. service, maintenance and operations reports, including reports that address the percentage of up-time, the cause and frequency of outages, and corrective actions taken; reports addressing findings from periodic inspections of each site for vandalism and other issues; and reports addressing the reporting requirements specified in Attachment A, Technical Specifications for DCFC and Level 2 EVSE and Requirements for Operation; and
- f. other reporting requirements to be mutually determined that are of interest to Oregon State agencies and that can be readily and anonymously captured via charging equipment.

Contractor shall monitor charger performance and fault indications on an ongoing basis and provide bi-weekly reports to ODOT during the full period of installation and for the 5 years following commissioning of all WCEH charging stations, during which Contractor shall be providing ongoing operations, maintenance and repair.

Deliverables: Task reports; financial reporting, and other reporting data as required by ODOT; ongoing charging station operations, maintenance, service and WCEH charging station usage reports.

Schedule: TBD at time of Contract negotiations.

TASK 2 – HOST SITE OWNERSHIP AND EVALUATION, PLANNING AND ACQUISITION

2.1 Host Site Ownership, and/or Evaluation of and Identification of Candidate Sites

Contractor shall provide proof of Contractor's ownership, of all existing Oregon WCEH DCFC and Level 2 EVSE assets and host site agreements or proof that Contractor has procured the right to upgrade such assets and perform all other obligations required under this Contract. Under the circumstances where Contractor owns existing Oregon WCEH DCFC and Level 2 EVSE assets and host site agreements, Contractor shall conduct an evaluation of the following, and share with ODOT its plans to assess and upgrade each site, including:

- Whether to upgrade all 44 current Oregon WCEH sites or propose new sites for some (or all) of the current 44 public WCEH charging stations;
- The need to re-negotiate terms or length of Host Site agreements to ensure 5 or more years of operation following the commissioning of all upgraded Oregon WCEH charging stations, pursuant to this RFP;
- Whether Contractor wishes to (or must, due to inability to extend Host Site agreements for a term necessary to ensure continued operation for 5 or more years following commissioning) pursue new host sites at some or all of the 44 communities currently served by the Oregon WCEH.

If the Contractor determines that an existing Oregon WCEH host site's charging station is to be decommissioned, and another station in the community is to be established, a transition plan must be developed, in cooperation with the host site and ODOT, to ensure (i) overlap and continued operations of the existing site until a new host site is identified and fully operational; (ii) removal of the DCFC and Level 2 EVSE and any additional equipment or material added to the original Oregon WCEH host site to make it an operable charging station and restoration of the site to an agreed-upon status (at a minimum, that meets the terms specified in the site host lease agreement); and (iii) a communications plan is established to make local EV drivers aware of the upcoming change and the timing and completion date of such change. Outreach and website updates to communicate this information to all likely Oregon WCEH EV drivers shall be undertaken by Contractor.

If the Contractor does not own the current WCEH DCFC and Level 2 EVSE assets and own or have rights to each of the current 44 WCEH charging stations, Contractor shall share with ODOT its proposed plan to pursue new host sites in all of the 44 communities currently served by Oregon's WCEH.

Contractor shall share with ODOT the proposed DC Fast Charging and Level 2 EVSE Charging configuration anticipated at each of the 44 WCEH locations, e.g., one or more DCFC chargers offering both CHAdeMO and CCS J1772 capability, at what kW power level(s) (50 kW or higher); one or more Level 2 EVSE J1772 charger, at what kW power level(s) (7.2 kW or higher). Contractor shall upgrade conduit to enable 150 kW (or higher) fast charge capability for each DCFC at each of the 44 Oregon WCEH charging stations, to ensure future-proofing.

Contractor shall share with ODOT the 4 (or more) proposed WCEH charging sites at which Contractor shall install at least one dual-head CHAdeMO and CCS-1 DCFC that offers 150 kW (or higher) power level.

Contractor shall share with ODOT the 4 (or more) proposed WCEH charging sites at which Contractor shall (i) install more than one DCFC dual-head CHAdeMO and CCS DCFC (50 kW or higher power level) or (ii) incorporate resiliency options such as solar power; battery storage; a combination of solar power and battery storage; or other community resiliency capabilities that can be utilized by the local community as a power source for emergency functions.

Contractor has proposed in its RFP Proposal candidate host sites to serve as WCEH DCFC and Level 2 EVSE charging stations. If Contractor seeks to identify a new host site, Contractor shall consult Attachment C (Recommended Oregon Host Site Attributes and Screening Criteria), and consider any additional factors the Contractor deems relevant. Contractor is also encouraged to consider prospective host site owners that propose cost-sharing or other advantageous co-investments in support of EV's and community resilience. Contractor shall coordinate and attend site visits with the PM and other Agency representatives and will obtain documentation (such as documents relating to survey work and utilities) relating to those sites as requested by Agency.

Deliverables: If Contractor owns or controls the 44 current charging station sites or other proposed sites, Contractor shall provide proof of ownership of, or leasehold rights to, each of those sites, through documentation satisfactory to ODOT, including proof that Contractor's rights to the site extend for a term of at least 5 years following the upgrade and commissioning of all Oregon WCEH sites or an explanation of how Contractor will negotiate extensions of the terms of the site agreements to ensure a minimum of 5 years of operation following the commissioning of the WCEH charging stations on such sites.

To the extent that Contractor does not own or control any of the proposed charging station sites, Contractor shall provide ODOT with an explanation of how such sites will serve each related community, with supporting data, and will arrange site visits as requested by ODOT. Contractor shall also provide a strategy and timeline for securing ownership or leasehold rights to such proposed charging station sites and, upon securing such rights, shall provide proof of such rights through documentation satisfactory to ODOT, including proof that Contractor's rights to the site extend for a term of at least 5 years following the commissioning of the WCEH charging stations on such sites.

Schedule: TBD at time of Contract negotiations.

2.2 Utility Coordination and Cost Estimating

Contractor shall coordinate all cost estimating, work orders, and interconnection issues with the power utilities serving the host sites. Cost estimates for any necessary power utility upgrades must be included in a Host Site Feasibility data package presented to ODOT.

Deliverables: Cost estimates, timelines and other information related to electric power utility upgrades and interconnection work.

Schedule: TBD at time of Contract negotiations.

2.3 Host Site Agreement and/or Lease Negotiation and Execution

In the case of new charging station sites, the Contractor shall complete a investigations as requested by Agency, including but not limited to investigations relating to environmental or hazardous materials assessments and analysis, traffic or engineering feasibility, power interconnection issues, and the financial viability of the proposed host site owner (or current host site owners, as appropriate). Upon presentation of this information and ODOT approval, the Contractor shall manage lease negotiations, if applicable, and provide ODOT with a copy of its proposed executable lease for review. .

If the Contractor determines that an existing Oregon WCEH host site's charging station is to be decommissioned, and another station in the community is to be established, and Contractor owns the existing DCFC and Level 2 EVSE assets at the site to be terminated, Contractor shall coordinate with ODOT regarding its actions to ensure: (i) continued operation of the existing site until the new host site is fully operational; (ii) removal of the DCFC and Level 2 EVSE equipment and additional equipment installed on the original Oregon WCEH host site and restoration of the site to a status approved by Agency; and (iii) an active communications plan is established to make local EV drivers aware of the upcoming change, its timing and completion, as well as a plan for outreach to all likely WCEH EV drivers.

Deliverables: Host Site Feasibility Package that incorporates all site details and a current or updated Host Site Agreement (e.g. an executable lease) for each site location. If applicable, Contractor shall coordinate and obtain ODOT approval for (i) decommissioning existing Oregon WCEH charging stations and replacing them with new ones in the same communities, ensuring continued operation of the current charging station until the new charging station is fully operational, and (ii) appropriate removal from the former site of all charging equipment, and active plans to communicate changes to EV drivers.

Schedule: TBD at time of Contract negotiations.

2.4 Land Use, Building, Electrical and Environmental Permits

In the case of new charging station sites, the Contractor shall manage the process for obtaining all required authorizations to operate the charging station site as required under the Contract, including land use and building permits. The Contractor shall meet with jurisdictions as needed and attend meetings and hearings when required. Contractor shall coordinate the preparation of application materials required for submittal. Contractor shall collect and organize land use and permitting approval documentation and submit these documents to ODOT.

Contractor shall prepare and deliver all zoning and permitting application packages that may be required by State or local jurisdictions. Contractor shall coordinate modifications to any materials, including construction drawings, and submit the packages as required. Contractor shall deliver zoning approvals and completed permits from the governing jurisdiction for the sites, and a complete copy of the application packages to ODOT.

Upon completion of all host site acquisition tasks, including a fully executed lease or other documents evidencing Contractor's authority to operate the charging station on the site, land use approvals and an approved building permit, Contractor shall provide a site book detailing associated materials utilized in the process.

Deliverables: All permit applications and supporting materials; final land use, environmental and hazardous materials and building approvals as required; construction, design and engineering drawings necessary to obtain approvals; fully executed lease or other documents evidencing Contractor's authority to operate the charging station on the site, and site book for each location.

Schedule: TBD at time of Contract negotiations.

TASK 3 - DESIGN, ENGINEERING, CONSTRUCTION AND INSTALLATION

3.1 Design & Engineering

In the case of new charging station sites and as required for current WCEH sites, Contractor shall provide all architectural and engineering services supporting site design and the development of approved zoning and construction drawings suitable for land use and permitting submission, as appropriate. Site design must include the site location (including square footage, and longitude/latitude coordinates for GIS database needs), identification of all easements, licenses and other use rights; utility routing, additional meter placement, additional circuit placement; station layout including curbs, wheel stops/bollards, canopy and other structures, and setbacks; designation of any adjoining structures; continuous and sufficient access from the nearest public right-of-way to the premises; underground trenching (if required); landscaping; erosion control; and retaining walls.

Contractor shall prepare land use drawing(s) ("Zoning Drawings"), as appropriate, in preliminary and final form, acceptable for submittal to the applicable governing agency. Primary considerations for these drawings may include, but is not limited to: (a) vicinity map, property owners and boundary lines; (b) access road (existing or proposed); (c) elevations; (d) existing and proposed equipment and structural improvements; (e) utility lines and meter locations; (f) legal description of the property; (g) signage and lighting; (h) traffic patterns; and (i) any other information or submissions required or requested by the government agency. Upon completion of the final Zoning Drawings, Contractor shall provide to ODOT a hard copy of the final zoning drawings at the size of 11" x 17".

As appropriate, Contractor shall prepare site-specific engineering and construction drawings and specifications ("Construction Drawings"). All Construction Drawings must be wet stamped by a licensed engineer and prepared for submittal and review by all applicable governmental agencies necessary for the construction and operation of the subject site. Contractor shall submit to ODOT for preliminary approval all Construction Drawings prior to the applicable due dates. Upon completion of the final Construction Drawings, Contractor shall provide to ODOT a copy of the final Construction Drawings in hard copy at the size of 11" x 17" as well as an electronic copy. Contractor shall perform minor revisions to the Construction Drawings to accommodate site design modifications required by the application jurisdiction or requested by ODOT. A major revision is defined as a design change required by the jurisdiction or by ODOT that requires a level of effort to revise the drawings substantially equivalent to preparing a new drawing.

If required, Contractor shall visit the site and create all required landscaping plans, plant specifications and irrigation plans.

If required, Contractor shall prepare accurate, high-quality photo simulations of a proposed site for use in obtaining zoning or other approvals as may be required from time to time. Photos must be of adequate magnification, size and scale to allow visual interpretation of all critical details necessary for review for zoning and other approvals.

If required, Contractor shall provide surveys as required by the scope of work for each site or as requested by the Host Site owner or ODOT. Prior to any survey work being performed, Contractor shall gain approval from ODOT for this additional level of work.

Deliverables: All permit, zoning, and construction drawings; and any architectural and engineering documents, necessary surveys in support of land use-related permits and construction services.

Schedule: TBD at time of Contract negotiations.

3.2 Site Preparation

In the case of new charging station sites and as required for current WCEH sites, after all land use and building permits have been obtained, Contractor shall make all site preparations in advance of construction activities. Such preparations may include (but are not limited to): traffic and pedestrian controls to ensure public safety; locating and marking utilities; conducting surveys; providing for appropriate environmental controls to prevent erosion, storm water runoff, etc.; creating protected areas for equipment and materials staging; and notifying adjacent property owners of construction activities, if required.

Deliverables: Documentation of all site preparations, including photos and any applicable signed certifications, completed work, compliance documents, etc.

Schedule: TBD at time of Contract negotiations.

3.3 Construction

The Contractor shall provide all construction-related services and materials necessary to successfully deliver the scope of work under this SOW, including but not limited to: mobilization of work force and materials; saw cutting asphalt or concrete for trench; excavate or trench for conduit and utility pull box; place utility hand hole and conduit; backfilling of trench; placement of forms for poured concrete for meter cabinet, EV-unit, footings for structural improvements/canopy, and other project site requirements such as curbs, wheel-stops, bollards, etc.; pour concrete, patch asphalt and site cleanup; installation of DCFC and Level 2 EV Charging equipment and any other relevant equipment on cured concrete pad; installation of wheel-stops, bollards, area lighting, beacon signs and canopies where appropriate; installation of meter cabinet and breakers; pull wire and connect power to EV charging equipment; site clean-up and demobilization; etc.

Deliverables: Documentation and invoices showing construction materials and services for all Oregon WCEH EV charging sites in quantities and locations as mutually determined and consistent with the overall project budget.

Schedule: TBD at time of Contract negotiations.

3.4 Utility Integration

The Contractor shall arrange for, coordinate and oversee the successful integration of all utility connections, including but not limited to transformer upgrades and three-phase power connection from utility power source.

Deliverables: Report, noting utility provider, the nature of utility connections (including but not limited to transformer upgrades and three-phase power connections from the utility source), and date of completion. Any signed documents of completion of work, certifications, and compliance shall be included in the Report.

Schedule: TBD at time of Contract negotiations.

3.5 Installation of Charging Equipment

Contractor(s) shall install all EV charging equipment and associated structures in locations and quantities as mutually agreed, consistent with the overall project budget. All installed EV charging equipment, structures and site improvements must be approved by the appropriate permitting and inspection agencies, including electrical inspection.

All installed EV charging station equipment and related site improvements must undergo acceptance testing and validation before ODOT will deem such stations operationally complete and ready for public use.

Deliverables: Installation of DC Fast-Chargers, Level 2 EVSE and associated structures and site improvements at all Oregon WCEH existing and new locations. As built drawings of each location, and any applicable documentation of approved inspections for each WCEH location.

Schedule: TBD at time of Contract negotiations.

TASK 4. OPERATIONAL ACCEPTANCE TESTING

4.1 Field Test Evaluation and Validation

Before Contractor accepts an EV charging station as operationally complete in accordance with the requirements of this Contract, and open for public charging services, Contractor shall conduct field tests of the charging equipment and networking functionality. Contractor shall prepare a checklist of all equipment functions to test and validate safe and functional operations. ODOT will provide final approval of all charging stations before commissioning.

Deliverables: Report, providing results of field tests and any supporting documentation that prove the site is functional and ready to commence public charging services. Provide the completed checklist showing all functions tested and validated.

Schedule: TBD at time of Contract negotiations.

4.2 Point of Sale and Transaction Processing

All EV charging stations to be provided under this Contract must support the specified multiple Point-of-Sale methods, including credit/debit card (either Tap-and-Go, Euro MasterCard Visa chip, or both) mobile payment; initiation of charging and payment by toll-free phone number; and optional payment via desired subscription methods. No EV charging station can be declared operationally complete until all Point-of-Sale capabilities, including the accurate processing of transactions (Payment Card Industry ("PCI") Compliant), back office support and account management and reconciliation functions, have been validated by Contractor and ODOT.

Deliverables: Report for each charging station, and for each charger at each station, demonstrating the functionality and use of all payment methods, including accurate processing of transactions, back-office support, accounting management, and reconciliation functions. Any supporting signed documents of certification, completion of work, and compliance must be provided in the report.

Schedule: TBD at time of Contract negotiations.

4.3 Customer Service Call Center

Contractor shall provide a Customer Service Call Center that must prove capable of providing ready customer support to consumers at each EV charging station deployed under this Contract. Contractor shall provide Customer Service Call Center services 24 hours per day, 7 days per week every week of every year during the period of performance, and for the 5-year period following the commissioning of all WCEH charging stations. Contractor shall provide Customer Service Call Center support via a toll-free telephone number clearly posted on or near the charging equipment that is available to EV drivers accessing the charging equipment, and to Host Site staff.

All EV charging stations must provide easy identification and instructions for using the Customer Service Call Center. No EV charging stations can be declared operationally complete until such stations include clearly visible instructions for contacting the Customer Service Call Center, and the Customer Service Call Center proves capable of providing or dispatching services to each specific EV charging station. Contractor shall provide to ODOT a Quarterly Service Level Report providing information and data and statistics applicable to customer service, including but not limited to, number of calls, reason for the call, length of time to answer the call, length of time to resolve the issue, and any other applicable customer service metrics requested by ODOT. Contractor shall provide English speaking customer service representatives and provide the location of the Customer Service Call Center.

Deliverables: Photos or copies of clearly visible instructions for contacting the Customer Service Call Center at each charging station and report of test calls from each charging station location. All supporting signed documents of certification, completion of work, and compliance must be provided in this report. The Quarterly Service Level Report shall be provided during the 5-year period of operation following commissioning of all WCEH charging locations.

Schedule: TBD at time of Contract negotiations.

4.4 Web Portal, Mobile Web Portal and Information Communication Technology Services

Contractor shall provide Information Communications Technologies, including a fully-functioning web portal that is active and ready for use by consumers. The web portal and mobile web portal features must be fully operational and accessible to consumers before the EV charging stations can be declared operationally complete. Contractor shall also provide information to support the functioning of its EV data system, to be integrated to communicate with drivers, hosts, and utilities. Consultant shall ensure that the web portal is available 24 hours a day 7 days a week with up-time goals of above 95%, with scheduled downtime for upgrades. Contractor shall provide wire-frames of the portal and its design. Contractor shall design the web portal to be ADA compliant.

Deliverables: Demonstration to ODOT (virtual or in-person) illustrating the functionality of each charging station on Operator's web portal, and demonstration of the functionality of its EV data system to communicate with drivers, site hose owners, and utilities. Any supporting signed documents of certification, completion of work, and compliance must be provided with this demonstration.

Schedule: TBD at time of Contract negotiations.

TASK 5. TRAINING AND SOFTWARE

During the period of installation and the subsequent 5-year period of operation following commissioning, Contractor shall provide all necessary training in station operations, point-of-sale or other transaction-related operations, and

any other training necessary for Host Site staff to assist consumers in the operation of the charging equipment and the processing of transactions, as pertinent. Within 6 months after installation of all WCEH charging locations, Contractor shall hold 3 geographically dispersed meetings at locations such that at least one of the meetings is within a reasonable driving distance from each of the Host Sites, and at least one virtual session, to allow Host Site staff from multiple charging station locations to attend the same training session, if Contractor prefers a consolidated training regimen. Additional virtual training sessions may be proposed, and conducted (dependent on COVID 19 or other conditions), but in-person training is preferred. Contractor shall be responsible for all costs of training Host Site staff.

Deliverables: Copy of training materials, dates of training sessions, and attendance lists. Any supporting signed documents of certification, completion of work, and compliance must also be provided.

Schedule: TBD at time of Contract negotiations.

TASK 6. OPERATIONS AND SUPPORT SERVICES

6.1 Financial Transaction Processing & Management at Charging Stations

Contractor shall provide DC Fast Charging and Level 2 EVSE and back-office/networking and transaction support that allows Point-of-Sale payment methods outlined in Attachment A, *Technical Specifications for DCFC and Level 2 EVSE and Requirements for Operation*. These Point-of Sale methods include the consumer's ability to use either a Tap-and-Go or Euro MasterCard Visa (EMV) Credit/Debit card at the Charging Station without incurring any additional fees, inconvenience or delays as compared to other payment methods. Contractor shall provide and display a toll-free number that provides the consumer with the option to initiate a charging session and payment at any time that the station is operational and publicly available. Contractor shall provide a mobile payment device physically located on the DCFC charging equipment and Level 2 EVSE (or payment kiosk). Contractor may offer additional payment mechanisms, such as a subscription or membership-based payment plan via a Radio Frequency Identification ("RFID") card or mobile app. The Point-of-Sale and supporting network must use an open protocol to allow subscribers of other EV charging system networks to access the charging station, as specified in the Requirements section of Attachment A, *Oregon West Coast Electric Highway Technical Specifications for DCFC and Level 2 EVSE and Requirements for Operation*.

Deliverables: Demonstration of tests of each payment mechanism, for each site and each charger. Any supporting signed documents of certification, completion of work, and compliance must be provided with this demonstration.

Schedule: TBD at time of Contract negotiations.

6.2 Cost Responsibilities

As owner or operator of the DCFC equipment and Level 2 EVSE equipment at each Oregon WCEH station, Contractor shall be legally responsible for ensuring payment of all operating costs, including but not limited to payment of rents, royalties, fees, taxes, revenue-sharing, utilities, and electric power supply for the charging equipment and supporting elements, such as area lighting and signage. Contractor shall provide annual audited statements demonstrating that all operating costs have been paid.

Deliverables: Proof certifying that Operator commits to make all payments. Any contracts or agreements that show commitment to pay costs associated with the charging stations, including, without limitation, the costs listed above.

Schedule: TBD at time of Contract negotiations.

6.3 Maintenance and Service Levels

During the period of installation and ongoing operation (an estimated 18 – 24 months for installation plus 5 years of ongoing operation, maintenance and repair following commissioning of all WCEH stations), Contractor shall provide complete maintenance and operation services for both DCFC and Level 2 EVSE charging equipment. Contractor shall be responsible for:

- a. Maintaining all components of the EV charging station, which includes but is not limited to the charging station pedestals, ancillary equipment, and any awnings, canopies, shelters and information display kiosks or signage associated with the charging station. "Maintaining," as used in this Contract shall mean "to provide all necessary or desirable repairs or alterations, as well as to clean the equipment and keep it safe, clean, and presentable."
- b. Ensuring all charging station components are operational 24 hours per day, 365 days per year and meet all applicable federal, State, and local electrical and building codes for construction and use of this equipment in a publicly accessible venue.
- c. Providing phone and email contact information for consumers and appropriate personnel or offices to address any issues such as, but not limited to, malfunctions, repairs, or vandalism. All issues must be addressed within 24 hours of the initial notice and the resolution must be reported to APM and Host Site personnel. The phone and e-mail contact information must be displayed and visible on or very near the charging station pedestal and in any information or payment kiosk.
- d. Providing on-going liability insurance that protects ODOT in the event of any claim from charging station users for any damage to personal property or harm caused to persons resulting from the any of the EV charging station components.
- e. Coordination of any repairs, alterations, or other maintenance items for any of the EV charging station components, and notifying and obtaining approval from the Host Site owner, as necessary, prior to performing any work on site.
- f. Ensuring the electrical power service and supply needed to power all DCFC and all Level 2 EVSE charging equipment.

Deliverables: Plan for providing operations, service, maintenance and repair in a timely manner to meet all requirements, including names and ID of any technicians or sub-contractors for provision of support. Proof of Insurance, proof of insured and levels as defined in the Contract.

Schedule: TBD at time of Contract negotiations.

6.4 Warranty Service

Contractor shall either provide, or arrange for the manufacturer, supplier or other third party to provide, warranty services on all DC Fast Chargers and Level 2 EVSE charging equipment for a minimum period of 5 years, commencing

upon the commissioning date of acceptance by ODOT. The warranty services must include repair or replacement of DCFC and Level 2 EVSE and ancillary equipment as necessary to correct any defects or failures. The warranty must include all materials, equipment, tools, labor and incidentals necessary to complete such repairs or replacements.

Deliverables: Report providing a copy of warranties for each type of equipment installed, including list of companies providing warranties, original and extended to ensure a minimum of 5 years of support.

Schedule: TBD at time of Contract negotiations.

TASK 7. MARKETING AND COMMUNICATIONS

7.1 Co-Branding of Equipment and Consumer Web Portal

Contractor shall work with ODOT and Washington State Department of Transportation (“WSDOT”) to incorporate WSDOT’s West Coast Electric Highway branding into the front-end consumer Web portal design prior to deployment and activation. Contractor shall consult with and obtain the prior written approval of ODOT and WSDOT for any co-branding of the EV charging equipment housing, prior to confirmation or implementation. ODOT and WSDOT retain final approval over branding and use of corporate logos and graphics on the exterior housing of the EV charging equipment and associated structures, kiosks or displays during the full period of installation and subsequent 5 years of operation.

Deliverables: Report demonstrating Contractor’s plans for WCEH branding, as well as any co-branding, and wire-frames for the consumer web portal.

Schedule: TBD at time of Contract negotiations.

7.2 Messaging Content Approval and Retention of Display Rights

During the estimated 18 -24 months to install WCEH charging stations, and for 5 years after commissioning of all WCEH stations, ODOT retains final approval authority over 100% of the content of messaging at EV charging stations, whether such messaging is static display or variable messaging. ODOT reserves the right to utilize 25% of the physical advertising space (e.g. signage) and the right to utilize digital displays used for advertising for 6 hours per day (as selected by ODOT) at WCEH charging stations for project related information and announcements of its own design and purpose. For purposes of this section, "messaging content" refers to all forms of visual or audio communication, whether commercial or non-commercial in nature that is displayed or broadcast for public consumption.

Deliverables: Report providing plans for coordinating and communicating with ODOT on message content and approvals.

Schedule: TBD at time of Contract negotiations.

7.3 Marketing and Communications Support

Contractor shall support the promotions, marketing and communications related to the Oregon WCEH EV charging stations. Contractor and ODOT shall work collaboratively on media and public events, issuance of press releases and materials, and project-related announcements during the estimated 18-24 month period of installation and subsequent 5 years following commissioning of all WCEH sites.

Deliverables: Marketing plan with periodic updates (annual at a minimum).

Schedule: TBD at time of Contract negotiations.

Task 8. CONTINGENCY TASK – Additional Charging Stations, Upgrades, and Work with other State Agencies.

These tasks shall be completed at the request of the Agency and upon agreement between Agency and Contractor for the work to be performed.

Contractor shall install, maintain, and provide equipment for adding additional charging stations to the current WCEH. All obligations of Contractor under this Contract that apply to charging stations, shall also apply to any such additional charging stations.

Contractor shall provide upgrades to charging stations as requested by Agency, subject to agreement of the parties on the respective funding to be provided by each of Agency and Contractor.

Contractor shall work with other State agencies, such as but not limited to, the Department of Forestry and the Department of State Parks in the selection of new host site locations.

Contractor will work with Agency to fulfill any other needs to support the infrastructure of Oregon’s WCEH that may arise during the term of the Contract.

F. KEY PERSONS

The following Contractor personnel are identified as Key Persons for this Contract (see Contract sections 5.1 and 5.2):

Name	Role

Exhibit B

Required Insurance

Contractor shall obtain at Contractor's expense the insurance specified in Exhibit B prior to performing under the Contract and shall maintain it in force and at its own expense throughout the duration of the Contract, and as required by any extended reporting period or tail coverage requirements, and all warranty periods that may apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance with exception of Professional liability and Workers' compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

If the term "Consultant" is used in the Contract, then references in this Exhibit B to "Contractor" shall be read to mean "Consultant".

INSURANCE REQUIREMENT REVIEW

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

SUBCONTRACTORS:

Contractor shall require that all of its subcontractors carry insurance coverage that the Contractor deems appropriate based on the risks of the subcontracted work. Contractor shall: obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

Required by Agency of Contractors with subject workers, as defined by ORS 656.027.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

PROFESSIONAL LIABILITY

Required Not required

Professional liability insurance must cover damages caused by negligent acts, errors or omissions of Contractor and Contractor's subcontractors, agents, officers or employees related to the professional Services to be provided under the Contract.

- Coverage shall be written with a per claim, incident or occurrence limit, or the equivalent, of not less than \$500,000 \$1,000,000 \$2,000,000 \$5,000,000.
- Annual aggregate limits shall not be less than \$1,000,000 \$2,000,000 \$4,000,000 \$10,000,000.

If this insurance is provided on a "claims made" basis, Contractor shall maintain continuous claims made liability coverage or shall acquire tail coverage to continue the same coverage for a duration of at least **2 years**, unless **3 years** or **5 years** is specified, after completion of the Contract or for the foregoing extended period beyond Contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the Contract.

COMMERCIAL GENERAL LIABILITY

Required

Commercial General Liability insurance must be issued on an “occurrence basis” covering “bodily injury” and “property damage” and 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 per occurrence.
- Annual aggregate limits shall not be less than \$2,000,000 \$4,000,000 10,000,000.

AUTOMOBILE LIABILITY

Required **Not required**

Automobile Liability insurance covering Contractor’s business-related automobile use covering all owned, non-owned, or hired vehicles for “bodily injury” and “property damage”, with a combined single limit of not less than \$500,000 \$1,000,000 \$2,000,000 \$5,000,000.

NETWORK SECURITY AND PRIVACY LIABILITY:

Required **Not required**

Contractor shall provide network security and privacy liability insurance for the duration of the contract and for the period of time in which Contractor (or its Business Associates or subcontractor(s)) maintains, possesses, stores or has access to agency or client data, whichever is longer, with a combined single limit of no less than \$1,000,000 per claim or incident. This insurance shall include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of agency or client data (which may include, but is not limited to, Personally Identifiable Information (“PII”), Payment Card Data and Protected Health Information (“PHI”)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of agency data.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days’ written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods or performing any Services required under the Contract. The Certificate(s) shall:

- ✓ List the “**State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees**” as a Certificate holder and as an **endorsed Additional Insured**.
- ✓ Include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract.
- ✓ Specify that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Professional liability and Workers’ compensation
- ✓ If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance.

If Agency has on file current certificates of insurance that meet all requirements of this **Exhibit B**, and Agency provides such notification to Contractor, then submittal of certificates prior to execution of the Contract will not be required. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

ENDORSEMENTS:

- i. **Additional Insured.** The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, required for performance of the Contract must include an **"additional insured"** endorsement specifying the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees."** Coverage shall be primary and non-contributory with any other insurance and self-insurance. Proof of additional insured status will include copies of endorsements and/or policy wording which must be submitted with the Certificate(s) of Insurance. **The additional insured endorsement must be acceptable to Agency.**

- ii. **Commercial General Liability** will contain, or be endorsed to contain, a provision that specifies **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as additional insureds with respect to liability arising out of work or completed operations performed by, or on behalf of, the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

STATE ACCEPTANCE:

All insurance providers are subject to State acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this **Exhibit B**.

Exhibit C

Special Terms and Conditions

- 1. Performance Evaluations.** Agency may conduct performance evaluation(s) of Contractor and its subcontractors during the term of the Contract, which will be compiled and maintained by Agency, and become a written record of Contractor's performance, including information gained during an exit interview. Generally, performance evaluations will include evaluation and scoring of various criteria related to, but not limited to, the following categories: (a) project management and coordination of staff and subcontractors, (b) project communication and responsiveness, (c) cost effectiveness and completing work within budget, (d) technical accuracy and quality control, (e) schedule performance. Agency will provide copies of any performance evaluation documentation to the affected Contractor or subcontractor and upon request, to third parties, unless lawfully exempt from disclosure.

In the event of a dispute regarding a Contractor's performance evaluation, Contractor may request a teleconference (or meeting at Agency) with Agency's Project Manager (APM) and Agency's Contract Administrator. If the dispute cannot be resolved with discussions or upon receipt of any follow-up documentation requested, Agency's Contract Administrator, in consultation with the applicable Area or Program Manager and APM shall make the final decision regarding the score received on a particular Form. Agency may adjust score(s) upon Agency's finding of good cause.

Agency's Use of Performance Evaluation. Agency may, at its sole discretion, use performance evaluation findings and conclusions in any way deemed necessary by Agency, including, but not limited to, corrective action, requiring submittal of performance improvement plan by Contractor, withholding of retainage, determining eligibility for future Contract assignments, and as a criterion of selection for future Agency contracts.

- 2. Dispute Resolution.** In the event of a dispute between the Parties regarding any aspect of the Contractor performance under the Contract, the Parties agree to attempt in good faith to resolve any such dispute through direct communications and negotiations. In the event good faith efforts do not resolve the dispute, the Parties agree to make a good faith effort to determine if mediation might resolve any such dispute. If the Parties determine that mediating the dispute would be productive, the Parties agree to use reasonable efforts to establish an agreement through which such mediation proceeding could take place. In the event such a mediation proceeding takes place, the Parties acknowledge and agree that any mediator or mediators retained to assist the Parties in resolving any dispute will not have the power to issue a binding decision on the Parties, but will merely act to facilitate the process of the Parties' attempt to resolve the dispute through mutual agreement.

Exhibit D

Federal Terms and Conditions

1. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS - (No-Goal)

For purposes of these DBE Provisions, "Contract" means any project-specific contract, Price Agreement ("PA"), Work Order Contract ("WOC"), Task Order, or any other contract entered into with ODOT (or local agency when applicable). "Consultant" and "Contractor" are hereinafter referred to as "Contractor". **See section e for specific reporting requirements of Contractor.**

- a. **Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:

- o [ODOT DBE Policy Statement](#)
- o [ODOT DBE Program Plan](#), and
- o Requirements of [Title 49, Code of Federal Regulations, Part 26](#) - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

ODOT's DBE Program authorities are set forth in the ODOT DBE Program Plan.

- b. **DBE Goals:** ODOT's overall goal for DBE participation is 15.37% for FHWA funded Contracts and 6% (proposed) for FTA funded Contracts. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by DBEs. For any Contract with an assigned DBE goal, Contractor shall select a portion of work available under the Contract for DBE participation. Contractor may use DBE subcontractors, suppliers, manufacturers, or Professional Services and Related Services providers to fulfill the assigned DBE Contract goal as long as the DBE is certified in the types of work selected. The assigned DBE Contract goal remains in effect throughout the life of the Contract. Dollar values of participation shall be credited toward meeting the assigned DBE Contract goal based on DBE gross earnings.

A DBE participation goal has not been established for this procurement.

- c. **Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this USDOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- d. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance of its contract no later than 10 calendar days from receipt of each payment Consultant receives from ODOT (or local agency when applicable). In addition, Contractor shall return any retainage payments to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed.
- e. **Reporting Requirements:** Contractor shall complete and submit initial, interim and final Paid Summary Reports [form 734-2882] per the instructions on the form. Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. **This reporting is required for all Contracts that include subs, regardless of funding or whether or not a DBE goal is assigned.**

- f. **Commercially Useful Function:** For Contracts with no DBE goal assigned, ODOT may count race-neutral DBE participation toward its overall goal, provided the DBE is performing a commercially useful function (“CUF”) as set forth in 49CFR § 26.55. A DBE performs a commercially useful function when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in 49CFR § 26.55. ODOT may perform a CUF review at any time during the performance of the Contract.
- g. **Termination of DBE Notification Requirement:** Contractor must promptly notify ODOT whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work. See additional requirements of 49 CFR § 26.53(f) regarding termination of a DBE.
- h. **Remedies:** Contractor’s failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management (“SAM”) available at <https://sam.gov/SAM/>, any other remedies provided under the Contract.
- i. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). Questions related to the DBE Program may be sent via email to ocrinforequest@odot.state.or.us or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 3930 Fairview Industrial Drive SE (MS 23), Salem, OR 97302; Phone: 503-986-4350 Fax: 503-986-6382.
- j. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

Related Web Sites:

All forms, documents and CFRs referenced or linked in these DBE Provisions are available on line at:

- o **Forms:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>
- o **Documents:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx>
- o **49 CFR Part 26:** <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=34ea04c7ed3d45b0e41f82a5646f1c15&rgn=div5&view=text&node=49:1.0.1.1.20&idno=49>

Acronyms & Definitions for DBE Provisions

APM	ODOT’s or local agency’s Project Manager for the WOC
CFR	Code of Federal Regulations
CUF	Commercially useful function
DBE	Disadvantaged Business Enterprise
OCR	ODOT Office of Civil Rights
ODOT	Oregon Dept. of Transportation
PA	Price Agreement
RFP	Request for Proposals
SSUR	Subcontractor Solicitation and Utilization Report
USDOT	United States Department of Transportation
WOC	Work Order Contract

Exhibit E

Independent Contractor Certification

The undersigned certifies that Contractor meets the following standards:

1. Contractor is registered under ORS Chapter 701 to provide labor or services for which such registration is required.
2. Contractor has filed federal and state income tax returns in the name of Contractor's firm or a business Schedule C as part of the personal income tax return, for the previous year, or Contractor expects to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. Contractor shall furnish the tools or equipment necessary for the contracted labor or Services.
4. Contractor has the authority to hire and fire employees who perform the labor or services.
5. Contractor represents to the public that the labor or services are to be provided by Contractor's independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following):**

- A. The labor or services are primarily carried out at a location that is separate from Contractor's residence or is primarily carried out in a specific portion of Contractor's residence, which is set aside as the location of the business.
- B. Commercial advertising or business cards are purchased for the business, or Contractor has a trade association membership.
- C. Telephone listing used for the business is separate from the personal residence listing.
- D. Labor or services are performed only pursuant to written contracts.
- E. Labor or services are performed for two or more different persons within a period of one year.
- F. Contractor assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature: _____ **Date:** _____

Exhibit F

Compensation Provisions - Part 1

A. METHOD OF COMPENSATION and PAYMENT OPTIONS:

Contractor shall complete all Services and provide all Deliverables as defined in the Contract. If the applicable compensation is exhausted, but Services and Deliverables are not complete, Contractor shall complete the Services and provide the Deliverables to Agency's satisfaction without additional compensation.

The amount payable under the Contract may be adjusted by Agency or renegotiated to:

- Reduce the NTE or Fixed-Price amount associated with tasks/Deliverables that were not authorized by Agency or not performed by Contractor;
- Reduce the NTE or Fixed-Price amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the Contract;
- Increase the NTE or Fixed-Price amount for additional tasks/Deliverables added to the scope of work via amendment to the Contract.

Eligible Costs

The precise configuration of eligible costs and expense reimbursement will be determined during the Contract negotiations. All project costs must be necessary for and directly connected to the acquisition and installation or upgrading of Oregon public WCEH charging stations.

Examples of eligible reimbursable expenditures include:

- Personnel costs for Project and site design;
- EV charging equipment, equipment for payment mechanisms, and construction materials;
- Optional equipment (e.g., RFID readers, 110/120 volt outlets and related electrical capacity and wiring, resiliency);
- Installation costs directly associated with and required for the safe operation of DCFC and Level 2 EVSE charging stations;
- Electric service upgrades from start of property line to charger (e.g. transformer, electrical wiring, conduit, trenching and repaving trenched area, electric panel);
- EV charging station connection to electrical service;
- Signage including: signage that clearly identifies the route from the highway to the station and on-site signage that identifies the charging site location to an approaching driver from any ingress;
- Onsite lighting of the EV charging station and affiliated parking spaces;
- Permitting costs and fees;
- Internet connection at the charging stations;
- Extended warranty coverage for the DCFC equipment and Level 2 EVSE charging equipment for up to five years following commissioning of all WCEH charging stations;
- Charging station equipment maintenance provided either by Contractor or a third party for up to five years following commissioning of all WCEH charging stations.

Examples of ineligible, non-reimbursable expenditures include:

- Purchase or rental of real estate;
- Construction or general maintenance of buildings and parking facilities;

- New paving and new landscaping;
- Electric supply costs;
- Project management costs;
- Administrative costs.

A.1 METHOD OF COMPENSATION

TIME AND MATERIALS WITH NOT-TO-EXCEED (T&M)

- Agency will pay Contractor for completion of Services required under the Contract on the basis of T&M, up to the NTE amount established in the Contract.

A.2 PAYMENT OPTIONS

Payments will occur only after Agency has determined that Contractor has completed, and Agency has accepted, the required Services (including defined Deliverables) for which payment is sought via a properly submitted and correct invoice.

Progress Payments for Acceptable Progress. Agency will pay Contractor monthly progress payments, up to the ODOT NTE amount, for Contractor’s acceptable (and verifiable) progress on tasks and Deliverables included in the invoice.

A.3 TOTAL CONTRACT VALUE SUMMARY TABLE

	Compensation Summary Table	Amount
ODOT NTE Amount	ODOT funding NTE Amount for eligible expense	
Contractor Match	Contractor Funding Match	
TOTAL CONTRACT VALUE		\$

B. TRAVEL

Travel costs are allowable only if they are authorized under the Contract and if the travel is essential to the normal discharge of Agency’s responsibilities and is related to official Agency business. **In accordance with the Travel chapter of the Oregon Accounting Manual, available at the following web address:**

<https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>, all travel shall be conducted in the most efficient and cost-effective manner that results in the best value for the state. Personal expenses shall not be authorized at any time. The following guidelines shall apply to the Contract:

- The travel, lodging, and per diem rates referenced in this Section B are the maximums that Contractor’s estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section B may be negotiated in the Contract, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller in the Travel chapter of the Oregon Accounting Manual.
- Mileage - For compensation based on T&M (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by Agency will be reimbursed

according to the rates set forth by the State Controller in the Travel chapter of the Oregon Accounting Manual in effect on the date when the travel occurs.

- For all methods of compensation; cost estimates for mileage, lodging and per diems for approved travel shall be based on the rates in effect on the date when the Contract is executed.
- For compensation based on T&M, Contractor shall submit receipts for travel-related expenses billed to Agency, such as but not limited to, lodging, rental vehicles, and air fare. If lodging is shared by two or more travelers, the lodging receipt must indicate the names of any travelers on official state business who shared the room.
- **For lodging** expenses approved by Agency, Agency will reimburse up to the maximum rates set forth in the Travel chapter of the Oregon Accounting Manual in effect on the date when the travel occurs or the actual cost, whichever is less.
- Approved **meal per diem allowances** must be in conformance with the Travel Policy found in the Oregon Accounting Manual in effect on the date when the travel occurs.

C. INVOICES

Contractor shall submit invoices electronically via email to the following: _____

Contractor shall not submit invoices to Agency any more frequently than once per month. Unless a different schedule is set forth in the Statement of Work, Contractor invoices are due no later than 20 business days following the end of the month in which the Services were rendered. If Contractor fails to present invoices in proper form within 60 calendar days after the end of the month in which Services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Contractor shall include in each invoice the information required in Agency's "Invoice Requirements Guide" per the method(s) of compensation used for the Contract. The Invoice Requirements Guide (as may be revised from time to time) is available at:

<https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx> (under "Guidance, Policy & Resources").

Contractor shall prepare invoice(s) based on the payment option identified in section A.2 of Exhibit.

Progress Reports: Each monthly invoice must include a progress report. The monthly progress report must cover the period invoiced and, at minimum, must:

- Describe the previous month's project activities and the planned activities for the next month;
- For each task/Deliverable identify the percentage completed during the month and the cumulative percentage completed;
- Reconcile progress of each task/Deliverable with the schedule identified for each.
- Identify issues/concerns that may affect the project SOW, schedule or budget.

Additional Requirements:

- Invoices must include a detailed breakdown of labor and allowable expenses for any T&M amounts included in the invoice.
- Agency may request a full written itemization of and receipts for, but not limited to, any or all labor and direct costs billed by Contractor. Contractor shall provide written itemization and receipts to Agency within 5 Business Days of Agency's request. Agency will not make payment to Contractor under the applicable invoice until Agency has received all requested receipts from Contractor.
- Any overdue payments to Contractor by Agency for an approved invoice are subject to ORS 293.462.

D. PAYMENT TERMS

Agency Payments to Contractor. Payment will be made to Contractor no later than 45 calendar days from receipt of invoice completed in conformance with all contractual requirements. Agency will endeavor to notify Contractor within 10 business days of receipt of invoice regarding any necessary revisions to the invoice. If revisions are necessary, payment will be made no later than 45 calendar days from Agency's receipt of the revised and properly completed invoice. Any interest for overdue payment will be in conformance with Oregon law.

Direct Deposit via Automated Clearing House ("ACH"). For Contractors that receive ongoing monthly payments from Agency on one or more contracts or work orders, Agency prefers making payments via ACH direct deposit. While not required, if Contractor has not previously authorized ACH direct deposit and would prefer ACH to expedite transfer of payments after invoices are approved, Contractor must complete a [Vendor ACH Authorization form](#) and submit to Agency per the instructions on the form.

Contractor Payments to Subcontractors. Contractor shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment Contractor receives from Agency for the subcontracted work. In addition, within 10 calendar days of receipt of retainage from Agency, Contractor shall pay to each subcontractor the retainage that pertains to the work of that subcontractor. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval by APM. To expedite Contractor's payments to its subcontractors, Contractor should make reasonable efforts to offer ACH direct deposit payments.

E. CORRECTIVE WORK

Contractor shall complete all Services, including Deliverables, as required in the SOW to Agency's satisfaction. If Agency, in its sole discretion, determines that the Services or associated Deliverables, or both, are unacceptable, Agency shall notify Contractor in writing of the deficiency. Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Contractor shall respond to Agency outlining how the deficiency shall be corrected. Contractor shall correct any deficiencies in the Services and Deliverables to Agency's satisfaction without further compensation. If resolution is not achieved, Agency may withhold other payments until deficiencies have been corrected to meet Contract requirements. Agency shall not unreasonably withhold payment.

F. WITHHOLDING/RETAINAGE

Agency reserves the right to initiate, at any time during the Contract, withholding of payment equal to 10% of the amount of each invoice submitted to Agency under the Contract. Agency will make final payment of any balance due to Contractor promptly upon verification of completion and acceptance of all Services by Agency and will pay interest as required on retainage.

G. PAYMENT REDUCTION

Agency, or its duly authorized agents, may audit Contractor's fiscal records at any time. If Agency finds previously undisclosed inaccurate or improper costs have been invoiced and paid, Agency will notify Contractor and seek clarification. Agency, in its sole discretion, may reduce the payment for Services by withholding the inaccurate or improper amounts from any future payment to Contractor, withhold the inaccurate or improper amounts from final payment to Contractor, or may use any other means to seek recovery of already paid but improperly calculated amounts.

H. RATE REVISIONS

Contractor's hourly rates applicable to this Contract shall be subject to review and approval by Agency. The hourly rates approved for use under this Contract shall remain in effect throughout the duration of the Contract unless revisions are approved by Agency. Hourly rates and other pricing submitted in a price proposal or rate schedule for evaluation and scoring under the solicitation for the Contract shall remain in effect for not less than the first 12 months of the Contract. Any approved revisions to the hourly rates allowable under the Contract shall not cause an increase in the Contract NTE amount (exceptions may be approved by Agency on a case-by-case basis).

J. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

For T&M compensation, Contractor shall invoice Agency only for actual productive time Contractor personnel spend on Services by any level of Contractor's staff (up to the established not-to-exceed amount). Contractor's general supervisors or personnel who are responsible for more than one Agency project shall charge only for actual productive time spent directly on the project identified in the Contract.

Agency will pay Contractor only up to the hourly rates set forth in the Contract that are commensurate with the type of Services performed regardless of the classification, title, or level of experience of the individual performing those Services.

Discriminatory Pricing. Charges as applied to work performed under Agency contracts and subcontracts may not be discriminatory against Agency. It is discriminatory against Agency if employee (or owner/sole proprietor) compensation (in whatever form or name) is in excess of that being paid for similar non-Agency work under comparable circumstances (see FAR Subpart 31.205-6).

Unallowable Charges

Agency will not pay for direct or indirect costs that are unallowable under the provisions of 48 CFR Part 31 (Federal Acquisition Regulations).

Costs or direct charges for, but not limited to, the following are not reimbursable:

- Costs for negotiation of the Contract or Contract amendments, including but not limited to proposal preparation, cost estimate preparation, preparation for negotiations, and negotiation of level of effort/budget.
- Costs related to disputes, including but not limited to discussions, meetings and preparation of any dispute related documentation.
- Mark-up on subcontractors or direct non-labor costs.
- Costs for general administrative, non-project related tasks.
- Transfer of knowledge and information related to Project Manager or other Key Person replacements.
- Cost of preparing invoices and supporting documentation when the cost to prepare or provide such invoices or supporting documents has been included in Contractor's overhead.
- Costs for correcting or making adjustments to incorrect or improper invoices;
- Any unallowable expenses for non-travel meals and refreshments under the provisions of the **Oregon Accounting Manual, Non-travel Meals and Refreshments section.**

Exhibit F, Part 2 – Cost Information

A. BILLING RATE SCHEDULES

Contractor shall, and shall cause each of its subcontractors, if any, to submit electronically to Agency a completed Billing Rate Schedule. The rate schedule must include fully burdened billing rates inclusive of labor, overhead, and profit. The billing rates invoiced under the Contract must be within the maximum rates per the classifications listed

in the billing rate schedule and no greater than the lowest rates charged to other public or private clients for similar services.

Prior to approval of additional subcontractors, Contractor shall provide to Agency any requested documentation of qualifications and experience of the prospective subcontractor and its staff.

Prior to execution of the Contract and any amendments that add Services, Contractor shall prepare and submit a detailed estimate based on the rates approved for the Contract.

The estimate must include a detailed breakdown for each element of the work regardless of compensation method. The estimate must identify:

- a) the proposed staff assignments (classifications, and names if requested, and qualifications) and hours per task and sub-task;
- b) an itemization with documentation (estimates from vendors shall be provided upon request) to support rental equipment, flaggers, travel and other direct non-labor expenses; and
- c) the price breakdown as provided by each subcontractor that shows the assigned staff (classifications, and names if requested) and hours per task and sub-task and itemized direct non-labor costs. Agency may ask for qualifications of any staff assigned to work on a project if they were not included in Statement of Proposal originally submitted for solicitation; and

Notes:

- The price breakdown must be developed using approved labor rates and allowable expenses as described in this **Exhibit F**.
- No mark-up is permitted on subcontractors or direct non-labor costs.

Exhibit G
Title VI Non-discrimination Provisions

During the performance under this Contract, Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- a. Compliance with Regulations:** Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- b. Nondiscrimination:** Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. Information and Reports:** Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Agency, FHWA or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to Agency, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, Agency shall impose such Contract sanctions as it, FHWA or FTA may determine to be appropriate, including, but not limited to:
 - (i) Withholding of payments to Contractor under the Contract until Contractor complies, and/or
 - (ii) Cancellation, termination or suspension of the Contract, in whole or in part.

Incorporation of Provisions: Contractor shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as Agency, FHWA or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request Agency, and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.