

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
EMERGENCY RELIEF PROGRAM
Supplemental Project Agreement No. 32282
Project Name: NW Newberry Rd @ MP 0.5**

THIS SUPPLEMENTAL PROJECT AGREEMENT (Agreement) is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and MULTNOMAH COUNTY acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" or collectively as "Parties."

RECITALS

1. By the authority granted in Local Agency Certification Program Agreement No. 29110, executed on November 16, 2015 (Local Agency Certification Program Agreement) incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with Agency for the performance of work on this improvement Project. The Certification Program allows State to certify a local agency's procedures and delegates authority to the certified local agency to administer federal-aid projects.
2. NW Newberry Road is a part of the Agency's street system under the jurisdiction and control of Agency.
3. The project described in this Agreement is one of the required test projects Agency must perform in order to obtain conditional certification in the areas of consultant selection, design, ROW acquisition, ad-bid-award, and construction administration, described in the Local Agency Certification Program Agreement.

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

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to Agency delivering the NW Newberry @ MP 0.5 project, hereinafter referred to as "Project." Project includes improvements needed to repair a slope failure on NW Newberry Road which will include a retaining wall, drainage improvements, and roadway reconstruction. The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The Project will be conducted as a part of the Emergency Relief Program (ERP) under Title 23, United States Code. The total Project cost is estimated at \$1,800,000, which is subject to change. The Project will be financed with \$1,615,140 of ERP funds. Agency shall be responsible for all remaining costs, including the 10.27 percent match for all eligible costs, any non-participating costs, and all costs in

excess of ERP funds. Any increase in ERP funds must be approved by the Federal Highway Administration (FHWA). Agency will report the final cost of each phase of the Project at the completion of each phase, as well as the total Project cost at the end of the Project, to the State's Local Agency Liaison.

3. If State performs work on the Project, State will provide Agency with a preliminary estimate for the cost of State's work. Prior to the start of each Project phase, State will provide an updated estimate of State's costs from that phase to Agency. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction, described in the Local Agency Certification Program Agreement. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per the Terms of this Agreement.
4. The scope, schedule, progress report requirements, and Project Change Request process are described in Exhibit B, attached hereto and by this reference made a part hereof. Agency agrees to the conditions set forth in Exhibit B.
5. Agency shall make all payments for work performed on the Project, including all construction costs, and invoice State for one-hundred (100%) percent of its costs. State shall reimburse Agency invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement and any non-participating costs will be the responsibility of the Agency. State shall invoice FHWA and Agency for work provided as part of the Project. Agency agrees to reimburse State for work performed for the project upon receipt of invoice. Failure of Agency to make such payments to State may result in withholding of Agency's proportional allocation of State Highway Funds until such costs are paid. Agency understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.
6. Agency shall pay all reimbursable costs of the Project, submit all claims for federal-aid participation to State, and compile accurate cost accounting records. When the actual total cost of the Project has been computed, Agency shall furnish State with an itemized statement of final costs. State will reimburse Agency at the federal participating rate listed in Terms of Agreement 2 for costs incurred. Reimbursement to Agency shall take place after ERP funds are released to State.
7. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
8. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
9. Information required by 2 CFR 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by State to Agency with the Notice to Proceed
10. Indirect Cost Rate.

- a. As required by 2 CFR 200.331(a)(4), the indirect cost rate(s) for this project at the time the agreement is written is 56.94%. This rate may change during the term of this Agreement upon notice to ODOT and ODOT's subsequent written approval.
 - b. If the approved rate changes during the term of this Agreement, Agency shall invoice ODOT using the current indirect cost rate(s) for the Project on file with ODOT at the time the work is performed. If Agency does not have an approved indirect cost rate on file with ODOT at the time the work is performed, Agency shall invoice ODOT using a zero percent (0%) rate.
11. Agency shall perform formal consultant selection, design (excluding bridge design), advertise, bid, award the construction contract, and perform construction contract administration. Agency understands that this Project is a test project for formal consultant selection, design (excluding bridge design), advertise, bid, and award of the construction contract, and performing construction contract administration.
 12. State will submit the requests for federal funding to the FHWA. The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance and scope approved by FHWA will be considered nonparticipating and paid for at Agency expense.
 13. State's Local Agency Liaison or designee will provide Agency with a written notice to proceed for each phase of the Project when FHWA approval has been secured and funds are available for expenditure on this Project.
 14. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
 15. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or ten (10) calendar years following the date of final execution, whichever is sooner. The Project will be completed within two (2) calendar years following the date of final execution of this Agreement by both Parties or such time as set forth in the "ER Manual" published by the Federal Highway Administration. Projects for permanent repairs that have not advanced to construction obligation by the end of the second fiscal year following the year in which the disaster occurred cannot be authorized. Additional information can be obtained at <http://www.fhwa.dot.gov/reports/erm/ermchap6.cfm#i>.
 16. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
 17. State may conduct periodic inspections during the useful life of the Project to verify that Project is being properly maintained and continues to serve the purpose for which federal funds were provided.

18. State and Agency agree that the useful life of the Project is 20 years.
19. By signing this Agreement, Agency agrees to comply with the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>. If, in the preceding fiscal year, Agency received more than 80% of its gross revenues from the federal government, those federal funds exceed \$25,000,000 annually, and the public does not have access to information about the compensation of executives through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, Agency shall report the total compensation and names of its top five executives to State. Agency shall report said information to State within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as Exhibit "C".

20. Americans with Disabilities Act Compliance:

- a. **General:** Agency agrees to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA) as identified in paragraph 1 of the General Provisions section of Local Agency's Certification Program Agreement, and to utilize ODOT standards to assess and ensure Project compliance with the ADA.
- b. **ADA Design Standards and Construction Specifications:** Agency agrees to comply with ODOT's current ADA-related design standards, construction specifications, and design exception documentation and approval requirements for design, modification, upgrade, or construction of Project sidewalks, curb ramps, and pedestrian activated signals on both the Oregon State Highway System (state highway) and on the local agency system, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and current ODOT Curb Ramp Inspection form.
- i. **ADA Inspection Forms:** Prior to issuing the Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Agency's approved equivalent, Agency agrees to submit an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Regional Local Agency Liason for each curb ramp designed, constructed, upgraded, or modified for this Project. The completed form is the required documentation from Agency showing that each curb ramp meets ODOT standards and is ADA compliant.

ODOT's fillable Curb Ramp Inspection Form 734-5020 and instructions are available at the following website:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>

- ii. **State inspection:** Agency shall promptly notify State of Project completion and allow State to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.
 - c. **Reimbursement:** State will not reimburse Agency for work that does not meet the applicable ODOT standards without an approved design exception, regardless of whether the work is on a State-owned or an Agency-owned facility.
 - d. **On-going Maintenance and Inspection Obligation:** Agency shall, at its own expense, maintain and periodically inspect any Project sidewalks, curb ramps, and pedestrian activated signals on portions of the Project under Agency's maintenance jurisdiction upon Project completion and throughout the useful life of the Project to ensure continuing compliance with the ADA. This provision shall survive termination of the Agreement.
21. Agency shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. Agency shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
22. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). Consistent with ORS 30.140, it is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
23. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so.

The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

24. This Agreement may be terminated by mutual written consent of both Parties.

25. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
- b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
- c. If Agency fails to provide payment of its share of the cost of the Project.
- d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
- e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.

26. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

27. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires State to return funds to the FHWA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

28. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and

enforced as if the Agreement did not contain the particular term or provision held to be invalid.

29. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
30. Agency certifies and represents that each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
31. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
32. This Agreement and the Local Agency Certification Program Agreement, as amended and all attached exhibits constitutes the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.
33. State's Local Agency Liaison for the Agreement is Reem Khaki, 123 NW Flanders Street, Portland, OR 97221, 503-731-8501, reem.d.khaki@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
34. Agency's Project Liaison for this Agreement is Ian Cannon, County Engineer, 1620 SE 190th Avenue, Portland, OR 97233, 503-704-5170, ian.b.cannon@multco.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #21107) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

Agency/State
Agreement No. 32282

Under authority from Subdelegation Order No. 11, Paragraph No. 1, the Maintenance Engineer is authorized to declare an emergency and Federal Emergency Relief Program Funds were approved by FHWA on June 13, 2017.

MULTNOMAH COUNTY, acting by and
through its elected officials

By _____

Title _____

Date _____

**LEGAL REVIEW APPROVAL (If required
in Agency's process)**

By _____
Agency Legal Counsel

Date _____

Agency Contact:

Ian Cannon
County Engineer
1620 SE 190th Avenue
Portland, OR 97233
503-704-5170
ian.b.cannon@multco.us

State Contact:

Reem Khaki
Local Agency Liaison
123 NW Flanders Street
Portland, OR 97209
503-731-8501
Reem.d.khaki@odot.state.or.us

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

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Certification Program Manager

Date _____

By _____
Region 1 Manager

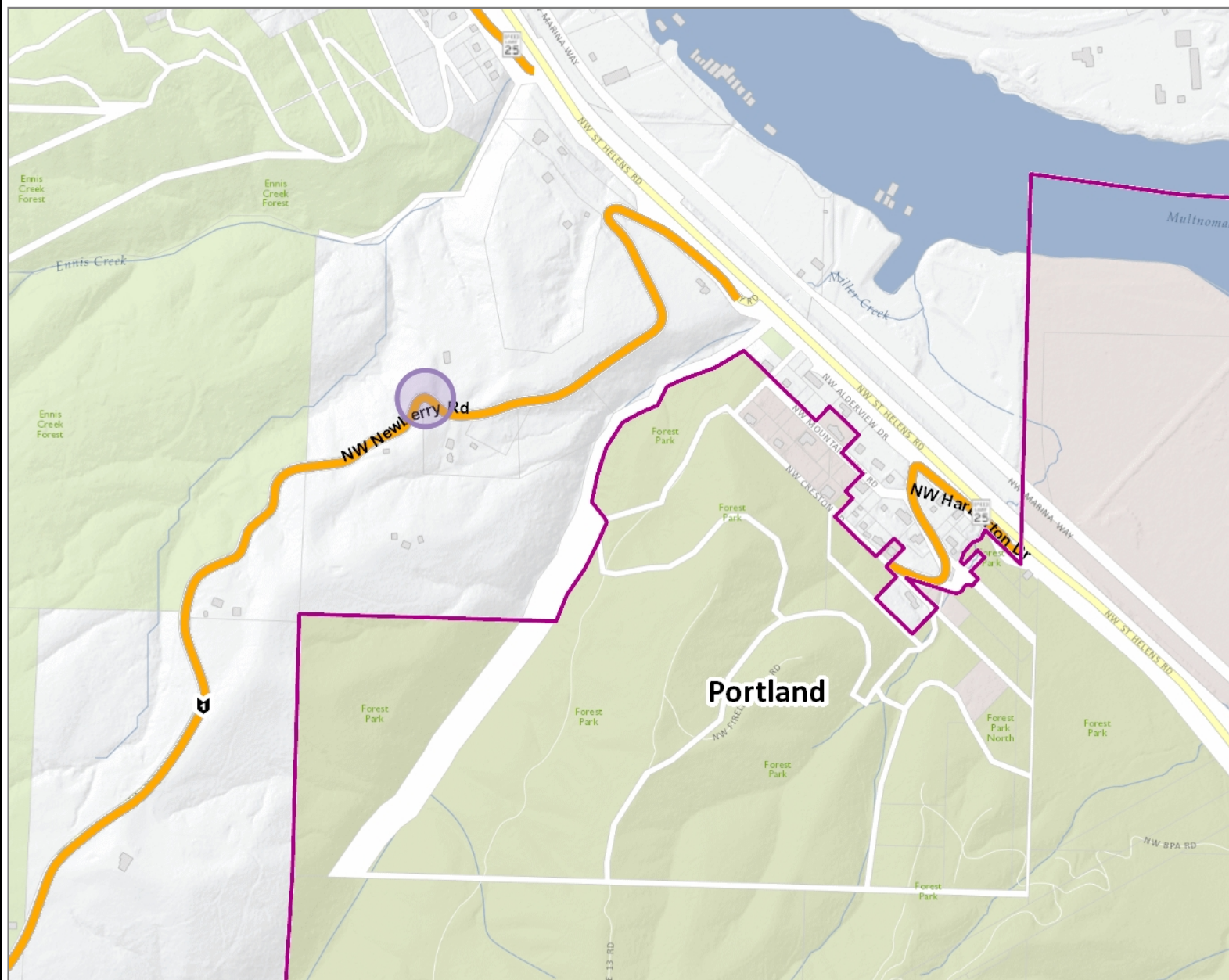
Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General (If over
\$150,000)








Date _____

EXHIBIT A - PROJECT LOCATION MAP



Legend

Speed Signs

-  SPD 15
-  SPD 20
-  SPD 25
-  SPD 30
-  SPD 35
-  SPD 40
-  SPD 45

City Boundaries

County Mile Posts (288895)

-  MP 1
-  MP 10
-  MP 11
-  MP 12
-  MP 13
-  MP 14
-  MP 15
-  MP 16
-  MP 17
-  MP 18
-  MP 19
-  MP 2
-  MP 20
-  MP 3
-  MP 4
-  MP 5
-  MP 6
-  MP 7
-  MP 8

Notes



This map is provided for informational purposes only. Information used to develop this map has been obtained from many sources, and is not guaranteed to be accurate. Multnomah County assumes no responsibility for the accuracy of information appearing on this map.

Scale: 1: 9,028

Printed: 5/9/2017

Exhibit B

Project Progress Reports and Project Change Request Process
Agreement No. 32282
Key Number: 21107
Project Name: NW Newberry Rd @ MP 0.5

1. Project Description

Project includes improvements needed to repair a slope failure on NW Newberry Road which will include a retaining wall, drainage improvements, and roadway reconstruction

2. This Project is subject to progress reporting and project change process as stated below.

3. **Monthly Progress Reports (MPR)** - Agency shall submit monthly progress reports using MPR Form 734-2935, incorporated by reference and made a part of this Agreement. The MPR is due by the 5th day of each month, starting the first month after execution of this Agreement, and continuing through Project completion.

The fillable MPR form and instructions are available at the following website:
http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

Table 1: Project Milestones – Construction Project

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of federal funds for the Preliminary Engineering phase of Project	08/15/2017
2	Obligation (Federal Authorization) of federal funds for the Right of Way phase of the Project	10/15/2017
3	Obligation (Federal Authorization) of federal funds for the Construction phase of Project	3/15/2018
4	Project Completion (State issues Project Acceptance / 2 nd Note)	10/15/2018

5. **Project Change Request (PCR) Process** - Agency must obtain approval from State's Liaison for changes to the Project's scope, schedule, or budget as specified

in paragraphs 5a, 5b and 5c, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

- a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).
 - b. **Schedule**— A PCR is required if Agency or State's Project Liaison anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
 - c. **Budget** – Total Project Cost and approved funds for the Project are controlled by Terms of Agreement, paragraph 2 of this Agreement.
6. **PCR Form** - Agency must submit all change requests using PCR Form 734-2936, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion of State's Area Manager.

The fillable PCR form and its instructions are available at the following website:
http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

7. **Consequence for Non-Performance** - If Agency fails to fulfill its obligations in paragraphs No. 3 through No. 7 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's managed funding programs, (b) withdrawing unused Project funds, and (c) terminating this Agreement as stated in Terms of Agreement, Paragraphs No. 25a and 25b of this Agreement.

Exhibit C
Federal Funding Accountability and Transparency Act (FFATA)
Subaward Reporting

(For purposes of this Exhibit, references to “your organization” shall mean “Agency” and references to “ODOT” shall mean “State.”)

The Oregon Department of Transportation (ODOT) is required to fulfill a federal requirement for contracting under the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS). FFATA reporting is a requirement for subawards (also known as subrecipients) of federal awards in excess of \$25,000. Your organization will enter into an agreement with ODOT where the funding source is a federal grant with a subrecipient relationship. Your organization is required to submit the information below to the Oregon Department of Transportation within fourteen calendar days of execution of the Agreement and annually thereafter, if applicable. (See the following page for further details.)

Legal entity name: _____

Data Universal Number System (DUNS) number: _____

Executive compensation

Executive compensation information is also required to determine whether or not the following information must be reported in FSRS:

- a. In your organization’s previous fiscal year, did your organization receive 80% or more of its annual gross revenue and \$25,000,000 or more in federal procurement contracts, subcontracts, loans, grants, subgrants, cooperative agreements and federal financial assistance awards subject to the Transparency Act? (Include parent organization, all branches, and all affiliates worldwide.)
☐ Yes ☐ No If “yes,” proceed to b. If “no,” no further action is required and submittal of this form is not required.
- b. Does the public have access to information about the compensation of the senior executives in your organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?
☐ Yes ☐ No If “yes,” provide a link to the SEC: <http://www.sec.gov> where this information is located and return form to the ODOT contact shown at the bottom of this form.

Provide link here:

If “no,” provide compensation information below.

Names and annual compensation amounts of the five most highly compensated executives:

1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

Business entity contact information (person completing form):

Type name	Title	Date
Return completed form to: Jeff Flowers, Program and Funding Services Manager; Oregon Department of Transportation; 555 13 th Street NE; Salem, OR 97301; Jeffrey.A.FLOWERS@odot.state.or.us		

Background on FFATA requirements

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of the Act is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov.

Definition of compensation

Your organization is considered a subrecipient of federal funds. Unless your organization is exempt, FFATA requires you to report total compensation for each of your five most highly compensated executives for the preceding completed year. Total compensation means the cash and non-cash dollar value earned by the executive during the subrecipient's preceding fiscal year and includes the following: salary and bonus; awards of stock, stock options, and stock appropriation rights; earnings for services under non-equity incentive plans; change in pension value; above-market earnings on deferred compensation which is not tax-qualified; and other compensation as defined in 2 CFR Part 170, Section 170.330(b)(5)(vi).

More detailed information about the FFATA can be found at: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>

If you have any questions, contact:

Jeff Flowers
Program and Funding Services Manager
Oregon Department of Transportation
555 13th Street NE
Salem, OR 97301
Jeffrey.A.FLOWERS@odot.state.or.us
Telephone: 503-986-4453