

Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 27581
NE 238th Drive at NE Treehill Drive (Wood Village)

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" and Multnomah County, acting by and through its elected officials, hereinafter referred to as "County," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Local Agency Certification Program Agreement No. 26226 incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with County 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 that are not on the National Highway System.
2. NE 238th Drive is a part of the County's road system under the jurisdiction and control of County.
3. The Project in this Supplemental Project Agreement is one of the required test projects that constitute conditional certification described in Local Agency Certification Program (Certification Program) Agreement No. 26226.

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 County agree to widen the roadway for improved sight distance, install sidewalks, remove vegetation, and install warning signs on NE 238th Drive at NE Treehill Drive, hereinafter referred to as "Project." 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 total estimated cost of the Project is \$340,000, which is subject to change.
3. The Project shall be conducted as a part of the Hazard Elimination System Program (HEP) under Title 23, United States Code. HEP funds for this Project shall be limited to \$310,000. The Project will be financed with HEP funds at the maximum allowable

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federal participating amount, with County providing the match and any non-participating costs, including all costs in excess of the available federal funds.

4. County shall make all payments for work performed on the Project, including all construction costs, and invoice State for 100 percent of its costs. State shall reimburse County invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement, any deposited local funds, and any non-participating costs will be the responsibility of the County. State shall perform work in the estimated amount of **\$22,500**. State shall simultaneously invoice Federal Highway Association (FHWA) and County for State's Project costs, and County agrees to reimburse State for the federal-aid matching State share and any non-participating costs as determined in accordance with paragraph number 3 above, upon receipt of invoice. Failure of County to make such payments to State may result in withholding of County's proportional allocation of State Highway Trust Funds until such costs are paid. County understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.
5. State considers County 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.
6. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or 10 calendar years following the date all required signatures are obtained, whichever is sooner.
7. Local Agency Certification Program Agreement No. 26226 was fully executed on November 1, 2010. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
8. This Agreement shall supersede and replace Agreement No. 22889 and its supplements in its entirety. Agreement No. 22889 is terminated upon execution of this Agreement. Bills for preliminary engineering work incurred prior to the replacement of Agreement No. 22889 shall be invoiced by County and paid for by State under this Agreement.
9. If County fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the County's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such County breach.
10. County shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with

normal depreciation and/or service demand. State and County agree that the useful life of this Project is defined as twenty (20) years.

11. State may conduct periodic inspections during the life of County Certification Projects to verify that Projects are being properly maintained and continue to serve the purpose for which federal funds were provided.
12. This Agreement may be terminated by mutual written consent of both Parties.
13. State may terminate this Agreement effective upon delivery of written notice to County, or at such later date as may be established by State, under any of the following conditions:
 - a. If County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If County 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 County 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.
14. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
15. County, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for County's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon County'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 County, 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.

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16. 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.
17. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 26226, and all and the attached exhibits constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
18. State's Project Liaison for the Agreement is Tom Weatherford, Local Agency Liaison, 123 NW Flanders Street, Portland, OR 97209-4012, (503) 731-8238, thomas.l.weatherford@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.
19. County's Project Liaison for this Agreement is Adam Soplop, Project Manager, 1620 SE 190th Avenue, Portland, OR 97233, 503-988-5050 ext.22604, adam.soplop@co.multnomah.or.us, or assigned designee upon individual's absence. County 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 acknowledges 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 2010-2013 Statewide Transportation Improvement Program, (Key #13156) that was approved by the Oregon Transportation Commission on December 16, 2010.

Signature page to follow

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MULTNOMAH COUNTY, acting by and
through its elected officials

By _____
Jeff Cogen, Chair, Multnomah
County Board of Commissioners

Date _____

REVIEWED:

HENRY H. LAZENBY, JR., COUNTY
ATTORNEY FOR MULTNOMAH COUNTY, OREGON

By /s/ Matthew O. Ryan
Assistant County Attorney

Date June 22, 2011

County Contact:

Adam Soplop
Multnomah County
1620 SE 190th Avenue
Portland, OR 97233
(503) 988-5050 (ex22604)
adam.soplop@co.multnomah.or.us

Multnomah County Agreement
No. 1112148

State Contact:

Tom Weatherford
Local Agency Liaison
123 NW Flanders Street
Portland, OR 97209-4012
(503) 731-8238
thomas.l.weatherford@odot.state.or.us

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

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/
Chief Engineer

Date _____

By _____
Local Government Section Manager

Date _____

By _____
Region 1 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

Exhibit A – Project Location Map

