

Misc. Contracts and Agreements
No. 25329

**WALKWAY/BIKEWAY PROJECT AGREEMENT
2010-2011 Pedestrian and Bicycle Program Grant
Halsey Street Sidewalk Infill (Fairview)**

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", the City of Fairview, acting by and through its elected officials, hereinafter referred to as "Agency" and Multnomah County, acting by and through its elected officials, hereinafter referred to as "County".

RECITALS

1. NE Halsey Street is a part of the county road system under the jurisdiction and control of Multnomah County. NE 205th Avenue is a part of the city street system under the jurisdiction and control of the City of Fairview.
2. By the authority granted in ORS 366.514, funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3(a), of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the right of way.
3. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

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 design and construct a sidewalk on the north side of NE Halsey Street from 201st to 208th, including a drainage swale and pedestrian crossing, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

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2. Agency has determined that the actual total cost of the Project is estimated to be \$152,690. State shall fund the Project in an amount not to exceed \$127,690. Agency shall provide a match in the amount of \$25,000 and shall be responsible for any portion of the Project which is not covered by State funding.
3. The work is to begin upon execution of this Agreement by all parties and be completed no later than October 31, 2011. This Agreement shall terminate upon completion of construction and final payment, or five calendar years from date of final signature, whichever is sooner, unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

AGENCY OBLIGATIONS

1. Agency or its contractor shall conduct the necessary field surveys, prepare plans and contract documents; advertise for bid proposals, award all contracts, and supervise construction of the Project.
2. Agency shall submit a copy of the plans and specifications to State through the State's Pedestrian and Bicycle Program Manager for review and concurrence prior to advertising for a construction contract or prior to construction, if Agency forces will perform the construction work. Concurrence must be received from State prior to proceeding with the Project. The Project design, signing, and marking shall be in conformance with the current Oregon Bicycle and Pedestrian Plan and shall comply with the most current ADA guidelines.
3. Agency shall, upon completion of Project, submit to State Pedestrian and Bicycle Program Manager an itemized statement of the final actual total cost of the Project.
4. Agency represents that this Agreement is signed by personnel duly authorized to do so by the City Council.
5. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

6. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval.
7. The Special Provisions for the construction contract work for this Project shall include the following stipulations:
 - a. Contractor shall indemnify State, Agency and County and name State, Agency and County as third party beneficiaries of the resulting contract.
 - b. Contractor shall indemnify, defend and hold harmless State, Agency and County and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under this Contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State and Agency. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$ 2,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.
 - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the Contract shall include State and Agency and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance

coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State and Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.

8. Agency shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Oregon Department of Transportation, their officers, agents, and employees from and against any and all claims, suits, actions, losses, damages, costs, expenses, and liabilities of any nature whatsoever resulting from, arising out of, or relating to the activities of Agency or its officers, employees, subcontractors, or agents under this Agreement.
9. Notwithstanding the foregoing defense obligations under the paragraph above, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of State or any agency/department/division of State, nor purport to act as legal representative of the State or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such the State. State may, at anytime at its election and its cost, assume its own defense and settlement in the event that it determines that Agency is prohibited from defending it, or that Agency is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. State and Agency reserve all rights to pursue any claims it may have against the other if State elects to assume its own defense.
10. Agency shall be responsible for all costs not covered by State funding. State funding is limited to \$127,690.
11. Agency shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to, retirement system contributions, workers compensation, unemployment taxes, and state and federal withholdings.
12. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its subcontractors complies with these requirements.
13. During Project construction, Agency shall post signs that credit funding by a Grant from the Oregon Department of Transportation – Pedestrian and Bicycle Program. A sign template can be supplied by ODOT.

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14. Agency shall analyze the crossing at 205th Avenue to determine the most suitable crossing configuration and shall construct improvements as necessary.

COUNTY OBLIGATIONS

1. County shall, upon completion of Project, maintain the Project at its own cost and expense and in a manner satisfactory to State.
2. County hereby grants Agency and/or its contractor, the right to enter onto and occupy County right of way within the Project limits for the performance of field work and Project construction.

STATE OBLIGATIONS

1. State's Pedestrian and Bicycle Program shall review and must concur in the plans prepared by Agency before the Project is advertised for a construction contract or before construction begins if Agency forces shall perform the work. State's Pedestrian and Bicycle Program office shall process all billings submitted by Agency.
2. Upon receipt of notification that the Agency is prepared to proceed with the development of Project, State shall deposit with Agency the sum of \$63,845, such amount being equal to 50 percent of the State's share of the estimated Project costs. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment, the sum of \$63,845, such amount being equal to 50 percent of the State's share of the estimated Project costs. When added to the initial deposit, the final deposit will equal the State's share of the originally estimated costs of \$127,690. Should final Project costs exceed the original estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement is \$127,690. If final Project costs are less than original estimate, State shall deposit with Agency a final payment in an amount which, when added to the initial deposit, would equal the State's proportionate share of the originally estimated costs, based on a percentage calculated using State share and local match.
3. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of current biennial budget.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both parties.

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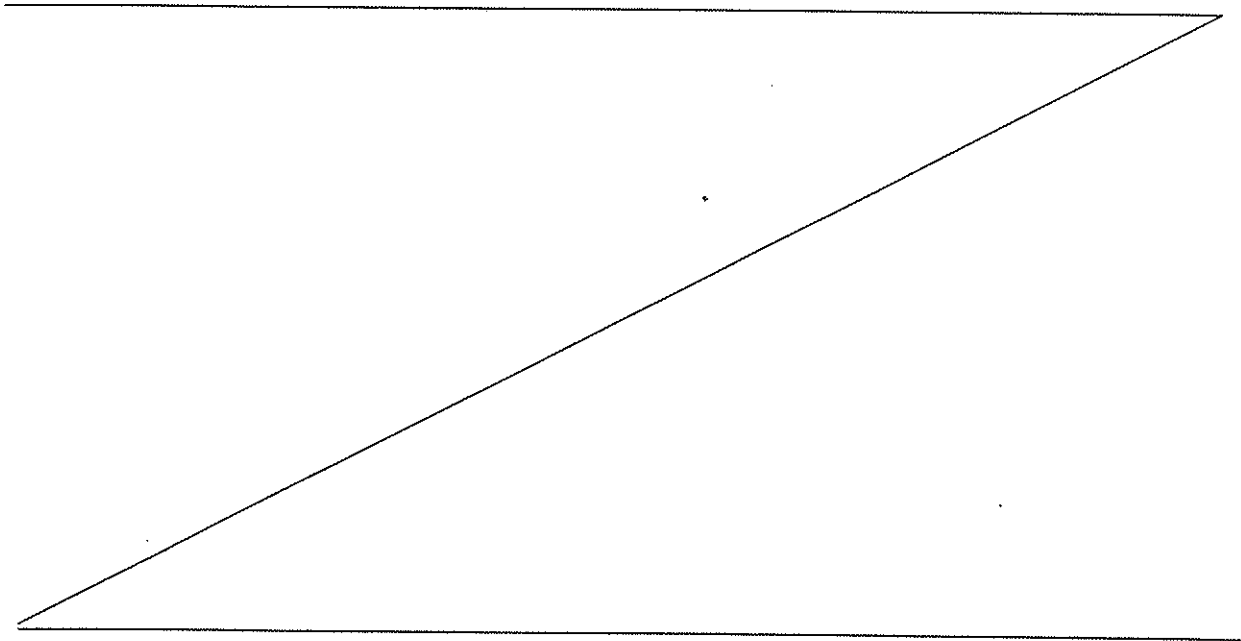
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension 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 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 State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If any funds are remaining from the advance deposit, they shall be refunded to State.
4. State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
5. 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.

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6. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. 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 State 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 a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

The Oregon Transportation Commission on June 18, 2003 approved Delegation Order No. 3, Paragraph 12, which authorizes the Director and Deputy Director, Highways to approve and execute all agreements pertaining to OTC approved local grant program agreements for bicycle and pedestrian projects.



Signature Page to Follow

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On July 7, 2005 the Director and Deputy Director, Highways approved Subdelegation Order No. 4, Paragraph 10, in which the Director and Deputy Director, Highways, delegates authority to the Technical Services Manager/Chief Engineer to approve and execute all agreements pertaining to OTC approved local grant program agreements for bicycle and pedestrian projects.

City of Fairview, by and through its elected officials

By J. Hall

Date March 19, 2009

By _____

Date _____

Multnomah County by and through its designated officials

By B. Vincent

Date April 1, 2009

By _____

Date _____

Agency Contact:

John Gessner
Community Development Director
1300 NE Village Street
Fairview, OR 97024
503-674-6205
gessnerj@ci.fairview.or.us

County Contact:

Brian Vincent, County Engineer
Multnomah County
1620 SE 190th Ave
Portland OR 97233
503-988-5050, ext 29642
brian.s.vincent@co.multnomah.or.us

STATE OF OREGON, by and through
its Department of Transportation

By C.M. Ne
Technical Services Manager/Chief Engineer

Date 4-10-09

APPROVAL RECOMMENDED

By Shula Lyons
Pedestrian/Bicycle Program Manager

Date 8 April - 09

APPROVED AS TO LEGAL SUFFICIENCY

By Dale H. W. W. W. W.
Assistant Attorney General

Date: 4/7/09

By _____
City Counsel

Date _____

By _____
County Counsel

Date _____

Exhibit A

