

**AMENDMENT NUMBER 2
LOCAL AGENCY AGREEMENT
HAZARD ELIMINATION PROGRAM PROJECT
EMERGENCY RELIEF PROGRAM
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
SE 282nd Avenue @ SE Stone Road Intersection**

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," **Multnomah County**, acting by and through its elected officials, hereinafter referred to as "Multnomah," and **Clackamas County**, acting by and through its elected officials, hereinafter referred to as "Clackamas," entered into an Agreement on September 21, 2005, and Amendment Number 1 on February 29, 2008. Said Agreement covers the realignment of the two (2) approaches of SE Stone Road and the widening of SE 282nd Avenue to provide left-turn lanes.

It has now been determined by State, Multnomah, and Clackamas that the Agreement referenced above shall be amended to add American Recovery and Reinvestment Act of 2009 (ARRA) funds and to add Emergency Relief Program (ERP) funds to this Project. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Insert new RECITALS, Paragraph 3 to read as follows:

3. The American Recovery and Reinvestment Act of 2009, hereinafter referred to as "ARRA," provides funding for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization, for fiscal years 2009 and 2010. The ARRA provides each state a sub-allocation of ARRA funds for cities, counties and metropolitan areas.

TERMS OF AGREEMENT, Paragraph 2, Page 1, which reads:

2. A portion of the Project work shall be funded as a part of the Hazard Elimination System Program under Title 23, United States Code. The total Project cost is estimated at \$2,224,000. The HEP funds for the Project are limited to \$500,000. Multnomah shall be responsible for the match for the federal funds and any portion of the Project which is not covered by federal funding. The estimate for the total Project cost is subject to change. Multnomah and Clackamas have executed a supplemental agreement regarding specific obligations as between those two parties relating to this Project, a copy of which is attached hereto, marked Exhibit B, and by this reference made a part hereof.

A portion of the Project work shall be funded as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The local STP funds for this Project shall be limited to \$675,000. The Project will be financed with

STP funds at the maximum allowable federal participating amount, with Multnomah providing the match and any non-participating costs, including all costs in excess of the available HEP and STP federal funds.

Shall be deleted in its entirety and replaced with the following:

2. The total Project cost is estimated at \$1,872,000 and the Project estimate is subject to change.
 - a. A portion of the Project work shall be funded as a part of the Hazard Elimination System Program (HEP) under Title 23, United States Code. The HEP funds for the Project are limited to \$500,000. Multnomah shall be responsible for the match for the federal funds and any portion of the Project which is not covered by federal funding. Multnomah and Clackamas have executed a supplemental Agreement number 22,616 regarding specific obligations as between those two parties relating to this Project and by this reference made a part hereof.
 - b. A portion of the Project shall be conducted as a part of the Emergency Relief Program (ERP), Title 23, United States Code. The ERP funds for this Project are limited to \$30,139 and will not exceed that amount without approval of the Federal Highway Administration (FHWA). Multnomah shall be responsible for ERP funds at the maximum allowable federal participating amount, with Multnomah providing the match and any non-participating costs. No State funds will be used in this Project.
 - c. A portion of the Project shall be conducted as a part of the American Recovery and Reinvestment Act (ARRA) under Title 23, United States Code. The ARRA funds for this Project are estimated to be \$173,929. Any additional or reallocated ARRA funds available that are sub-allocated to Multnomah must be approved by the Oregon Transportation Commission and included in the Statewide Transportation Improvement Plan. The amount of ARRA funds for this Project shall be the final amount of ARRA funds identified in the STIP. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Multnomah will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.
 - d. A portion of the Project work shall be funded as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. STP local funds for this Project shall be limited to \$678,386. The Project will be financed with STP funds at the maximum allowable federal participating amount, with

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Multnomah providing the match and any non-participating costs, including all costs in excess of the available HEP, STP, ERP, and ARRA federal funds.

Insert new TERMS OF AGREEMENT, Paragraphs 13 through 15, to read as follows:

13. State considers Multnomah 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.
14. Multnomah and Clackamas shall place signs that identify Project as "American Recovery and Reinvestment Act of 2009" (State approved design) as described in the ODOT Technical Bulletin TR09-02(B) (or most current version) titled "Project Identification Sign for ODOT Economic Stimulus Projects". Multnomah and Clackamas may affix additional signage that identifies their funds used for the Project.
15. Multnomah and Clackamas shall report to State the required reporting data by federal and state mandates for delivery of the ARRA program. State shall inform the local agencies of the reporting requirements once they have been received from FHWA and the Department of Administrative Services and such requirements shall be made a part of this Agreement. Multnomah and Clackamas are also subject to other requirements for use of ARRA funds, including, but not limited to, the U.S. Comptroller and Inspector General, and ARRA Sign Requirements provisions.

TERMS OF AGREEMENT, Paragraph 4, Page 2, which reads:

4. 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 ten calendar years following the date all required signatures are obtained, whichever is sooner.

Shall be deleted in its entirety and replaced with the following:

4. The term of this Agreement will begin upon execution and will terminate ten (10) calendar years following the date of final execution. The Project will be completed within two (2) calendar years following the date of final execution of this Agreement by all 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>

SPECIAL PROVISIONS, Paragraphs 11 through 18, shall be added and shall read as follows:

11. Final billings shall be submitted to State for processing within two (2) years from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) and 2) third notification for construction. Partial billing (progress payment) shall be submitted to State within one (1) year from the date that costs are incurred. Final billings submitted after two (2) years shall not be eligible for reimbursement. No ARRA will be available for project reimbursement after September 30, 2015. State shall not be responsible to provide additional funding to Multnomah and Clackamas that do not have final billings processed before this date.
12. Job Recruitment – In addition to normal recruitment processes on all ARRA funded projects, the contractor and all subcontractors shall also list job openings through “WorkSource Oregon” with the exception that job listings are not necessary when the contractor or subcontractor fills a job opening with a present employee, a laid-off former employee, or a job candidate from a previous recruitment.
13. Multnomah and Clackamas shall include the ARRA requirements in any contract it enters into, including consultant contracts, and subcontracts at any tier. Multnomah may modify language to match its own specifications, but such modifications shall be reviewed and approved by State prior to incorporation into any contract.
14. Multnomah and Clackamas shall comply with ARRA that provides the U.S. Comptroller General and his representatives with the authority: “(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and (2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.”
15. Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this Agreement, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.
16. Multnomah and Clackamas shall comply with the ARRA requirements that provide authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this Agreement. Multnomah is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this Project. Section 1515(b) of the ARRA further provides

that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

17. Whistleblower Protection –Multnomah and its Contractor shall, and shall require its subcontractors to, comply with Section 1553 of ARRA, which prohibits all non-federal contractors of ARRA funds, including the State of Oregon, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee as a reprisal for the employee's disclosure of information that the employee reasonably believes is evidence of: (a) gross mismanagement of a contract or grant relating to ARRA funds; (b) a gross waste of ARRA funds; (c) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (d) an abuse of authority related to implementation or use of ARRA funds; or (e) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. The Contractor and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of ARRA.

18. False Claims Act – The Contractor shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

This Amendment 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 Amendment so executed shall constitute an original.

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

This Project is in the 2008-2011 Statewide Transportation Improvement Program, (Key #13163) that was approved by the Oregon Transportation Commission on November 14, 2007.

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MULTNOMAH COUNTY, by and
through its elected officials

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

**APPROVED AS TO LEGAL
SUFFICIENCY**

By /s/ Matthew O. Ryan
Assistant County Attorney
Multnomah County, Oregon
Date _____

CLACKAMAS COUNTY, by and
through its elected officials

By _____
Chair
Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Clackamas Attorney
Date _____

Multnomah Contact:
Brian S. Vincent, PE, County Engr.
1620 SE 190th Avenue
Portland, OR 97233
503-988-5050
brian.s.vincent@multco.us
Multnomah County No. 0404169

Clackamas Contact:
Richard Nys
150 Beaver Creek Rd
Oregon City, OR 97045
503-742-4702
richardnys@co.clackamas.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator
Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief Engineer
Date _____

By _____
Region 1 Manager
Date _____

By _____
Local Government Section Manager
Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General
Date: _____

State Contact:
Tom Weatherford
123 NW Flanders
Portland, OR 97209
503-731-8238
thomas.l.weatherford@odot.state.or.us