

**AMENDMENT NUMBER 01  
LOCAL AGENCY AGREEMENT  
SURFACE TRANSPORTATION PROGRAM URBAN  
Stark Street Beaver Creek Culvert**

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 "Agency," entered into an Agreement on May 28, 2014. Said Agreement covers Agency replacing the existing culvert that is located at Stark Street with a spanning open bottom culvert and natural channel bottom that is wide enough to clear-span 1.5 times the active channel width of Beaver Creek.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to include provisions for State to perform Environmental Clearance and Hazmat Assessment on behalf of Agency, as well as right of entry to Agency's right of way for the purposes of performing the work and to update the Special Provisions and the Federal Standard Provisions. This Amendment will also allow Agency to select an Architectural and Engineering (A&E) and Non-A&E personal services consultant using the Direct Appoint consultant selection procurement process. The Direct Appoint process will be considered a test project for Direct Appoint consultant selection under Certification Agreement No. 26226. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**Attachment No. 1, Special Provisions shall be deleted in its entirety and replaced with the attached Revised Attachment No. 1, Special Provisions. All references to "Attachment No. 1, Special Provisions" shall hereinafter be referred to as "Revised Attachment No. 1, Special Provisions."**

**Attachment No. 2, Federal Standard Provisions shall be deleted in its entirety and replaced with the attached Revised Attachment No. 2, Federal Standard Provisions, dated March 4, 2014. All references to "Attachment No. 2, Standard Provisions" shall hereinafter be referred to as "Revised Attachment No. 2, Federal Standard Provisions, dated March 4, 2014."**

**EXHIBIT A- Vicinity Map for Beaver Creek Culvert in Multnomah County, shall be deleted in its entirety and replaced with "Revised Exhibit A". All referenced to EXHIBIT A shall be hereinafter referred to as "Revised Exhibit A".**

**Insert new EXHIBIT B: K14438 - Stark Street, Beaver Creek Culvert Project Roles and Responsibilities, including Environmental Clearance and Hazmat Assessment tasks.**

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

1. Under such authority, State and Agency agree for Agency to replace the existing culvert that is located at Stark Street with a spanning open bottom culvert and

natural channel bottom that is wide enough to clear-span 1.5 times the active channel width of Beaver Creek, hereinafter referred to as "Project." The Project will provide for fish passage up to and including the structure with the assistance and recommendations of the Oregon Department of Fish and Wildlife (ODFW) and the National Marine Fisheries Service (NMFS). It will also provide improved fish passage at the Troutdale Road culvert (the downstream culvert) with the assistance and recommendations of ODFW and NMFS. The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

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

1. Under such authority, State and Agency agree for Agency to replace the existing culvert that is located at Stark Street with a spanning open bottom culvert and natural channel bottom that is wide enough to clear-span 1.5 times the active channel width of Beaver Creek, hereinafter referred to as "Project." The Project will provide for fish passage up to and including the structure with the assistance and recommendations of the Oregon Department of Fish and Wildlife (ODFW) and the National Marine Fisheries Service (NMFS). The location of the Project is approximately as shown on the detailed map attached hereto, marked "Revised Exhibit A," and by this reference made a part hereof.

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

2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$1,146,833 which is subject to change. STP urban funds for this Project will be limited to \$1,000,000. The Project will be financed with STP funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

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

2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$1,204,333 which is subject to change. STP urban funds for this Project will be limited to \$1,000,000. The Project will be financed with STP funds at the maximum allowable federal participating amount, . Agency shall be responsible for the match for the federal funds and any portion of the Project, which is not covered by federal funding. The federal pro-rata funding for the project is 89.73 percent and provided federal funds will be subject to annual obligation limitations and possible rescissions. Agency shall be responsible for determining the amount of federal funds to be applied to each phase of the Project. Agency is not guaranteed the use of unspent funds for a particular phase of work. It is Agency's responsibility to notify State in advance of State obligating the funds for a

subsequent phase if Agency wants to release funds on the current authorized phase(s) of work.

**TERMS OF AGREEMENT, Paragraph 11, Page 3, which reads:**

11. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement will control over the attachments, and Attachment 1 will control over Attachment 2.

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

11. The Special and Standard Provisions attached hereto, marked Revised Attachment 1 and Revised Attachment 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Revised Attachment 1 and Revised Attachment 2. In the event of a conflict, this Agreement will control over the attachments, and Revised Attachment 1 will control over Revised Attachment 2.

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 their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #14438) that was approved by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

**SIGNATURE PAGE TO FOLLOW**

**MULTNOMAH COUNTY**, by and  
through its elected officials

By \_\_\_\_\_  
Chair

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Brian S. Vincent, P.E., County Engineer  
Multnomah County Land Use and  
Transportation  
1620 SE 190th Ave  
Portland, OR 97233  
503-988-5050 x29642  
cell: 503-737-4395

**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**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Project Services Manager- Region 1

Date \_\_\_\_\_

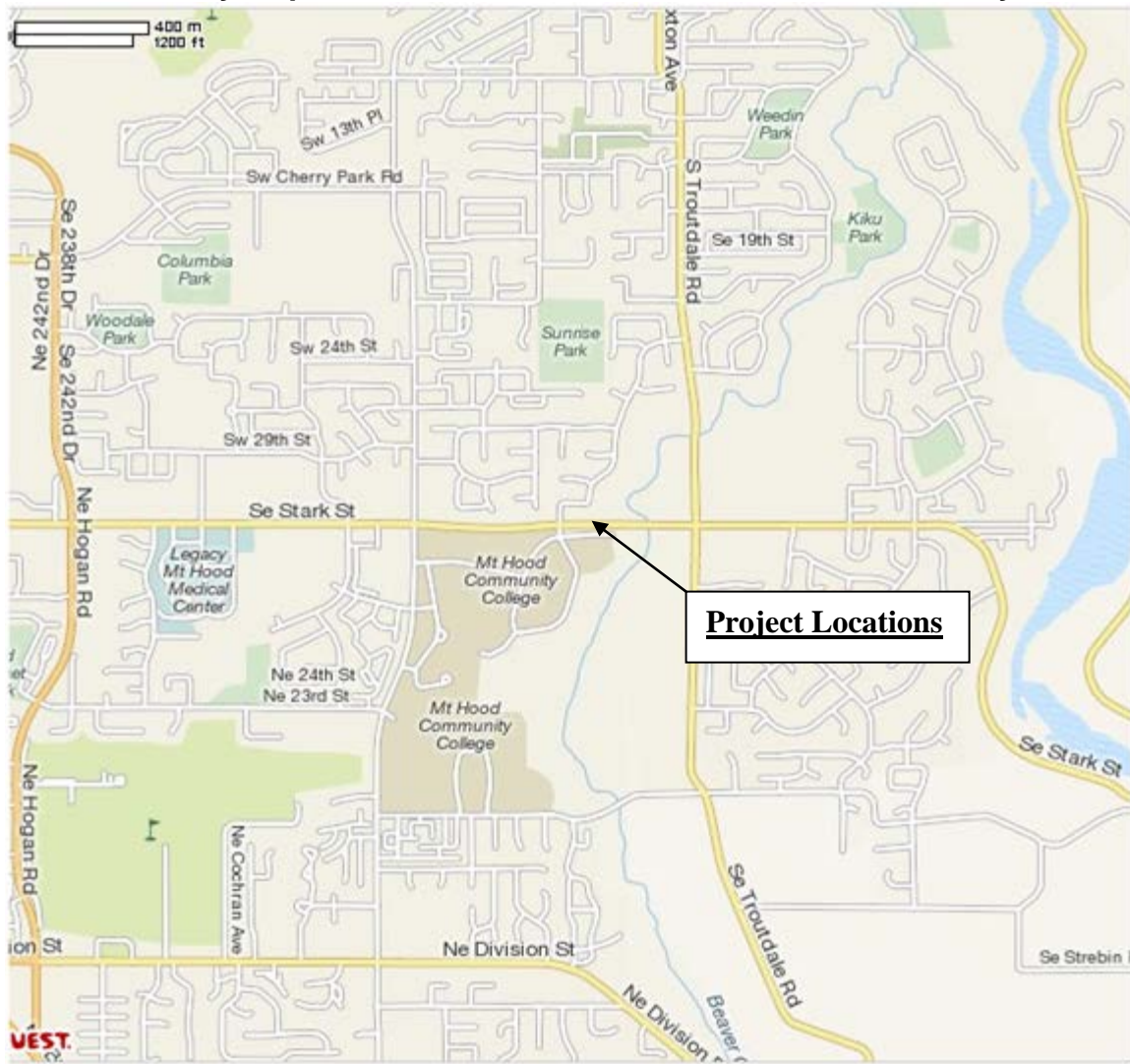
**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date: \_\_\_\_\_

## REVISED EXHIBIT A

### Vicinity Map for Beaver Creek Culvert in Multnomah County



## EXHIBIT B

### **K14438 -Stark Street, Beaver Creek Culverts Project Roles and Responsibilities including Environmental Clearance and Hazmat Assessment**

**A. ENVIRONMENTAL RESPONSIBILITIES OF STATE.** State shall perform services to assess, evaluate, investigate environmental impacts to Agency operating right of way and real property identified to be acquired for the Project as follows:

- i. Archeological Investigation: In compliance with all applicable Federal, State, Regional or local laws, codes, regulations conduct investigation and survey work including preparation of all reports and obtain all permits or other written approvals necessary to construct the Project.
- ii. Biological Investigation: In compliance with all applicable Federal, State, Regional or local laws, codes, regulations conduct investigation and survey work including preparation of all reports and obtain all permits or other written approvals necessary to construct the Project. Including but not limited to: "No Effect Memo", Botanical Survey, FAHP Notification and Fish Passage Plan as required.
- iii. Hazardous Materials Investigation: Conduct Phase 1 and Phase 2 Level Environmental Contamination investigations of properties identified, and prepare comprehensive reports of said investigations.
- iv. Historical Investigations: In compliance with all applicable Federal, State, Regional or local laws, codes, regulations conduct investigation and survey work including preparation of all reports and obtain all permits or other written approvals necessary to construct the Project.
- v. Wetlands Investigation: In compliance with all applicable Federal, State, Regional or local laws, codes, regulations conduct investigation and survey work including preparation of all reports and obtain all permits or other written approvals necessary to construct the Project.
- vi. NEPA/Federal Law Compliance; "4(f)/6(f)": To the extent this Project presents compliance issues with federal environmental protection laws and regulations, State shall ensure the Project is in compliance.

## EXHIBIT B

### MC&A No. 29839, Amendment No. 1

K14438 -Stark St Beaver Creek Culvert Project Roles/Responsibilities			
Resource Discipline	Work Task	Agency Responsibility	Estimate Cost
Air Quality	Not Required (assumes no signal phase changes)		
Archaeology	Shovel Testing	OSMA	\$23,000
	PA memo (assumes no resources found)	ODOT	\$1,000
	Tribal Consultation	ODOT	\$400
	COMPLETION		
Biology	NE memo (USFWS)	ODOT	\$2,000
	Botanical Survey	ODOT	\$800
	FAHP Notification	ODOT	\$5,000
	Fish Passage Plan	consultant	
	COMPLETION		
Hazmat	Level 1 Hazmat Report	ODOT	\$3,000
	Level 2 Hazmat Report (Contingency)	ODOT	
	COMPLETION		
Historic	Reconnaissance	ODOT	\$2,000
	PA memo	ODOT	\$1,000
	COMPLETION		
NEPA	Prospectus Part 3	Multnomah County	
	CE Closeout	ODOT	\$2,000
	COMPLETION		
Noise	Noise Study not required (assumes that the project will not halve the distance between the roadway and a sensitive noise receptor)		
Right-of-Way	Rights of Entry	Multnomah County	
Wetlands	1. Review of Existing Information and Field Reconnaissance	ODOT	\$1,000
	2. Wetland/Waters Delineation Field Work	ODOT	\$2,000
	3. Survey of Wetland Boundary	ODOT	\$1,000
	4. Wetland/Waters Delineation Report	ODOT	\$4,000
	5. Prepare Joint Permit Application	ODOT	\$5,000
	6. Compensatory Mitigation Concepts (Contingency)	ODOT	
	7. Compensatory Mitigation Report (Contingency)	ODOT	
	COMPLETION		
4(f) / 6(f)	6(f) Not Expected; 4(f) anticipated for historic property	ODOT	\$1,000
Other	SWMP (must conform to FAHP, ODOT Hydraulics Manual, wellhead protection requirements)	ODOT	\$1,000
	401 Certification	ODOT	\$500
	Public Involvement	Multnomah County	
	Flood Plain No Rise Certification	Multnomah County	
	Noise Variance(s)	Multnomah County	
	NPDES 1200-C	Multnomah County	
	Land Use	Multnomah County	
Total			\$55,700

**REVISED ATTACHMENT NO. 1 to Agreement No. 29839  
SPECIAL PROVISIONS**

- a. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, assist State with acquisition of necessary right of way and/or easements, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
- b. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection, and project manager services for administration of the contract.
- c. Agency is authorized (as a test Project) to select an Architectural and Engineering (A&E) and Non-A&E personal services consultant using the Direct Appoint consultant selection procurement process. The Direct Appoint consultant selection phase of this Project shall be considered a required test project that constitutes conditional certification under Local Agency Agreement No. 26226. The Direct Appoint consultant contract shall not exceed \$100,000 or Agency's Direct limitations, if less than \$100,000. Agency shall follow applicable laws and invoicing requirements described in Local Agency Certification Program Agreement No. 26226 for the Direct Appoint consultant selection phase of this Project.
- d. State may make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
- e. State shall perform Environmental Clearance and Hazmat Assessment services as outlined in Exhibit B, attached hereto and by this reference made a part of this Agreement.
- f. Agency shall make all payments for work performed on the Project for Direct Appoint consultant selection process costs, and invoice State for 100 percent of its costs. State shall reimburse Agency invoices for this work at the pro-rated federal share. All costs for this work that are beyond the federal and state reimbursement, any deposited local funds, and any non-participating costs will be the responsibility of the Agency. State shall simultaneously invoice FHWA and Agency for State's Project costs, and Agency agrees to reimburse State for the federal-aid matching state share and any non-participating costs 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 Trust 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.

- g. Agency shall upon receipt of a fully executed copy of this Amendment No. 1 and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$5,977 for the Project, said amount being equal to 10.73% of the estimated cost (\$55,700) for the work performed by State at Agency's request described in Exhibit B. Agency agrees to make additional deposits as needed upon request from State. Depending upon the timing of portions of the Project to which the advance deposit contributes, it may be requested by State prior to Preliminary Engineering, purchase of right-of-way, or approximately 4-6 weeks prior to Project bid opening.
- h. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the project, Agency shall pay any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total State costs for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to Agency.
- i. State and Agency agree that the useful life of this Project is defined as twenty (20) years.
- j. Maintenance responsibilities will survive any termination of this Agreement.

## **REVISED ATTACHMENT NO. 2**

### **FEDERAL STANDARD PROVISIONS**

#### **PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. Non-certified agencies must contract with State or a State certified local public agency to secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. Non-certified agencies may use a State-approved consultant to perform preliminary engineering, and construction engineering services.

#### **PROJECT FUNDING REQUEST**

4. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

#### **FINANCE**

5. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental

Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria in OMB CIRCULAR NO. A-133.

6. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the *Local Agency Guidelines Manual* that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.
7. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether

incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.

10. Agency shall follow requirements stated in the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving five hundred thousand (\$500,000) or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
11. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
12. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the Project Agreement. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one-month duration, based on actual expenses to date. All invoices received from Agency must be approved by State's Liaison prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction b) last payment for right of way acquisition and c) contract completion for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final invoices submitted after the three (3) months shall not be eligible for reimbursement. Agency acknowledges and agrees that 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 Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR part 18 subpart 42).
13. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time

extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

- b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

- 14. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
- 15. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

## STANDARDS

- 16. Agency agrees that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with *State's Oregon Bicycle & Pedestrian Design Guide* (current version). Agency shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. Agency may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
- 17. Agency agrees that if the Project is on the Oregon State Highway System or State-owned facility, that design standards shall be in compliance with standards specified in the current *ODOT Highway Design Manual* and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current *Oregon Standard Specifications for Highway Construction* and current *Contract Plans Development Guide*.
- 18. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet *ODOT Highway Design Manual* design standards must be justified and documented by means of a design exception. Agency

further agrees that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.

19. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the *Manual on Uniform Traffic Control Devices and Oregon Supplement* as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.
20. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

## **PRELIMINARY & CONSTRUCTION ENGINEERING**

21. Preliminary engineering and construction engineering may be performed by either a) State, b) Agency, c) State-approved consultant, or d) certified agency. Engineering work will be monitored by State or certified agency to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, b) State-approved consultant or c) certified agency. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State or certified agency shall, if they prepare any of the documents identified in this paragraph, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
22. Agency may request State's two-tiered consultant selection process as allowed by OAR 137-048-0260 to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of the State's processes is required to ensure federal reimbursement. State will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, Title 49 CFR part 18, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the consultant prior to receiving authorization from State to proceed.
23. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.

24. State or certified agency shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.
25. Upon State's or certified agency's award of a construction contract, State or certified agency shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's *Manual of Field Test Procedures*, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
26. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

#### **REQUIRED STATEMENT FOR United States Department of Transportation (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

27. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, Agency agrees to adopt State's DBE Program Plan, available at [http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe\\_program.aspx#plan](http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe_program.aspx#plan). Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

#### **Disadvantaged Business Enterprises (DBE) Obligations**

28. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the 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 Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

29. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
30. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

## **RIGHT OF WAY**

31. Agency and the consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24. State, at Project expense, shall review all right of way activities engaged in by Agency to ensure compliance with all laws and regulations.
32. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project provided Agency or the consultant are qualified to do such work, as required by the *ODOT Right of Way Manual*, and Agency has obtained prior approval from State's Region Right of Way office to do such work.
33. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each Party. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be responsible for coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through State's Liaison, who will forward the request to State's Region Right of Way office on all projects. Agency must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on a project). Agency shall contact State's Liaison, who will contact State's Region Right of Way office for additional information or clarification on behalf of Agency.



34. Agency agrees that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
35. Agency ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.
36. State and Agency grant each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

## **RAILROADS**

37. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing and at Project expense, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

## **UTILITIES**

38. Agency shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

## **GRADE CHANGE LIABILITY**

39. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
40. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
41. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent

as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Project Agreement.

## **MAINTENANCE RESPONSIBILITIES**

42. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

## **CONTRIBUTION**

43. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
44. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
45. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement

amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

## **ALTERNATIVE DISPUTE RESOLUTION**

46. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

## **WORKERS' COMPENSATION COVERAGE**

47. All employers, including Agency, that employ subject workers who work under this Project 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. Employers Liability Insurance with coverage limits of not less than five hundred thousand (\$500,000) must be included. Agency shall ensure that each of its contractors complies with these requirements.

## **LOBBYING RESTRICTIONS** – pursuant to Form FHWA-1273, Required Contract Provisions

48. Agency certifies by signing the Project Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal 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 federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars

(\$100,000), and that all such subrecipients shall certify and disclose accordingly.

- d) 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 Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.