

**AMENDMENT NUMBER 02
LOCAL AGENCY AGREEMENT
HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROJECT
Willamette River (Sellwood) Bridge (Bridge #06879) and
Oregon Route (OR) 43 Interchange Improvements
Multnomah County**

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 Local Agency Agreement No. 22,858 on March 10, 2006, and Amendment No. 1 on January 18, 2008. Said Agreement covers the preliminary engineering (PE) and right of way (R/W) activities for the Sellwood Bridge.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to redefine the Project, add additional funding, obligations, a construction phase, Special Provisions, Exhibit A Vicinity Map, Exhibit B Oregon Jobs and Transportation Act of 2009 (JTA) Progress Billing Form and revised Standard Provisions Attachment No. 2. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

EXHIBIT A shall be deleted in its entirety and replaced with the attached Revised EXHIBIT A. All references to "EXHIBIT A" shall hereinafter be referred to as "Revised EXHIBIT A."

ATTACHMENT No. 2, STANDARD PROVISIONS shall be deleted in its entirety and replaced with the attached Revised ATTACHMENT No. 2, STANDARD PROVISIONS. All references to "ATTACHMENT No. 2, STANDARD PROVISIONS," shall hereinafter be referred to as "Revised ATTACHMENT No. 2, STANDARD PROVISIONS."

RECITALS, Paragraph 1, Page 1, which reads:

1. The Sellwood Bridge is a part of the county road system under the jurisdiction and control of Multnomah County.

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

1. Oswego Highway, Oregon Route (OR) 43 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). The Sellwood Bridge (Bridge #06879) is a part of the county road system under the jurisdiction and control of Multnomah County.

RECITALS, Paragraph 4, Page 1, which reads:

4. By the authority granted in ORS 190.110 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.

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

4. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.

Insert new RECITALS, Paragraphs 6 through 8, to read as follows:

6. Oregon Jobs and Transportation Act of 2009 (JTA) Program, hereinafter referred to as the "JTA of 2009 Program," provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission (OTC).
7. Projects named in Section 64 of 2009 Legislative Assembly, Oregon House Bill 2001, as well as projects approved by the OTC pursuant to Section 64(3), were amended into the Statewide Transportation Improvement Program (STIP), including OR 43 at the Sellwood Bridge Interchange.
8. Governor Kulongoski signed HB 2001 on July 29, 2009, Chapter 865, Oregon Laws 2009. This legislation also know as the Oregon Jobs and Transportation Act, is the transportation funding plan for accountability, innovation and environmental stewardship; highway, road and street funding; and, multimodal funding. On October 21, 2009 the OTC approved projects relating to this legislation.

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

1. Under such authority, State and Agency agree to perform preliminary engineering (PE) and the necessary right of way (R/W) activities for the Sellwood Bridge Project (bridge #06879), 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.

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

1. Under such authority, Agency agrees to perform preliminary engineering (PE), the necessary right of way (R/W) and construction activities for the Sellwood Bridge and all phases of the OR 43 interchange improvements, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Revised Exhibit A" and by this reference made a part hereof.

Insert new TERMS OF AGREEMENT, Paragraph 2 to read as follows:

2. State and the Federal Highway Administration (FHWA) have a keen interest in making sure roles and responsibilities are clearly identified, therefore, both Parties agree to the roles and responsibilities in the environmental impact statement (EIS) Record of Decision (ROD) and that the OR 43 interchange improvements will be built according to the ROD unless otherwise approved by the FHWA.

TERMS OF AGREEMENT, Paragraphs 2 through 13 shall be hereinafter re-numbered as Paragraphs 3 through 14.

TERMS OF AGREEMENT, Paragraph 3, Page 2, which reads:

3. The estimated cost of the Project is **\$26,030,000** which is subject to change. The Project shall be funded from the following available moneys:
 - a. Highway Bridge Replacement and Rehabilitation Program (HBRR), large bridge category, under Title 23, United States Code, limited to **\$16,000,000** including match, for PE and R/W.
 - b. Metro Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code, at the maximum allowable federal participating amount, limited to **\$2,229,000**, for PE only.
 - c. State Region 1 Modernization funds limited to **\$1,500,000**, for PE and R/W only.
 - d. High Priority Projects Program and Transportation Improvements Program, under Title 23, United States Code, which incorporated SAFETEA-LU estimated at **\$7,000,000**, and can be used for both PE and R/W with Agency providing the match for the federal funds and any non-participating costs, including all costs in excess of the combined available federal funds. The federal pro-rata funding for the project is 89.73 percent and the provided federal funds will be subject to annual obligation limitations and possible rescissions.

The Federal Project Number and Project Description are as shown in the table below:

Federal Project Number	SAFETEA-LU Program	Project Description
1495	High Priority Projects	Sellwood Bridge Replacement-Multnomah County
4720	High Priority Projects	Rehabilitate Sellwood Bridge, Multnomah County, Oregon
335	Transportation Improvements	Sellwood Bridge, Multnomah County, Oregon.

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

3. The estimated cost of the Project is **\$330,000,000**, which is subject to change. The Project shall be funded with funds available to the County and from the following additional available moneys:
 - a. Highway Bridge Replacement and Rehabilitation Program (HBRR), large bridge category, under Title 23, United States Code, limited to **\$16,000,000** including match, for PE and R/W.
 - b. Metro Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code, at the maximum allowable federal participating amount, limited to **\$2,228,909** including match, for PE only.
 - c. State Region 1 Modernization funds limited to **\$1,500,000**, for PE and R/W only. These funds are to be used to match federal funds only.
 - d. High Priority Projects Program and Transportation Improvements Program, under Title 23, United States Code, which incorporated SAFETEA-LU estimated at **\$6,997,571** including match, and can be used for both PE and R/W with Agency providing the match for the federal funds and any non-participating costs, including all costs in excess of the combined available federal funds. The federal pro-rata funding for the Project is 89.73 percent and the provided federal funds will be subject to annual obligation limitations and possible rescissions.

The Federal Project Number and Project Description are as shown in the table below:

Federal Project Number	SAFETEA-LU Program	Project Description
1495	High Priority Projects	Sellwood Bridge Replacement-Multnomah County
4720	High Priority Projects	Rehabilitate Sellwood Bridge, Multnomah County, Oregon
335	Transportation Improvements	Sellwood Bridge, Multnomah County, Oregon.

- e. Surface Transportation Priorities Projects, program code 56C0 funds, designated in Division A of the Consolidated Appropriations Act, 2010 (Demo ID OR197), at the maximum allowable federal participating amount limited to **\$1,265,984**. These funds are 100 percent federal share and are available until expended with no obligation limitations.
- f. The HB2001 JTA of 2009 Program funds are limited to **\$30,000,000**. These funds are to be used only on OR 43 and the interchange improvements portion of the Project.

Insert new TERMS OF AGREEMENT, Paragraphs 15 through 21, to read as follows:

15. 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 e) Construction Advertising, Bid and Award, and f) Construction. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at County expense. County 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 County 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.
16. The funds available under the JTA of 2009 Program are State Highway Funds. To be eligible for reimbursement under the JTA of 2009 Program, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution.
17. The JTA of 2009 Program Funds are expected to become available on or before January 1, 2011 by way of increases in gas taxes and other fees under House Bill 2001, 2009 Legislative Assembly (Oregon Laws 2009, Chapter 865), and through the issuance and sale by the State Treasurer, of the bonds authorized by Section 61 of House Bill 2001, in an amount sufficient to fund this Project. The Agreement is effective and work may begin upon execution of this Agreement, but State's obligation to make project payments is contingent upon State determining that sufficient funds are available for the Project. State will notify Agency when such funds are available; and State shall begin payments for invoiced work pursuant to this Agreement from such date.
18. Agency and State have a joint obligation to ensure timely expenditure of the JTA of 2009 Program funds and to comply with the provisions of the bonds that finance the JTA of 2009 Program.
19. Agency and State shall jointly develop a Project charter to include Organizational Charts, Communication Plans, and Roles and Responsibilities approved by Agency's Bridge Manager and State's Region 1 Manager, or approved designee. This charter shall be approved before execution of the construction contract.
20. Agency shall present invoices for the eligible, actual costs incurred by Agency on behalf of the Project directly to State's Project Liaison for review and approval. Such invoices shall be submitted in the form as shown on "Exhibit B," JTA of 2009 Program fund Progress Billing, attached hereto and by this reference made a part hereof. Invoices will identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not greater than one month, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project. Upon

completion of the Project, Agency shall submit a final invoice and letter indicating that the Project is complete.

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

- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
- b. If Agency fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
- c. Because of legislative or other legal action, including but not limited to initiative petitions, there is failure to approve, reduction, elimination, or other interference with appropriations of state expenditure limitation to the extent that legal authority is insufficient to enable State, in its reasonable discretion, to continue making payments under this Agreement.
- d. State, the Department of Justice, or a court of competent jurisdiction determines that state law, rules, regulation or guidelines are modified, changed, repealed or interpreted in such a way that the activities described in this Agreement are no longer allowable or no longer eligible for funding proposed by this Agreement.
- e. 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.
- f. 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.

21. If State terminates this Agreement for the reasons described in Terms of Agreement 20 "a", "b" and "c" above, Agency must reimburse State for all JTA of 2009 Program funds expended. If Agency fails to reimburse State, State may withhold Agency's proportional share of State Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.

Insert new SPECIAL PROVISIONS, Paragraphs 8 through 20, to read as follows:

8. Agency shall be allowed to use an alternative contracting method of delivery, contingent upon FHWA approval of a SEP-14 request for this Project. The construction contract shall be owned by the Agency.
9. Agency shall follow Agency's procedures for contractor claims and Contract Change Orders (CCO's) as described in Agency's standard for federal-aid projects.

Agency's construction contract specifications are required to include a process for dispute and claim resolution. Those specifications must require a claims review by State of any unresolved claims prior to the contractor being allowed to pursue litigation. State will conduct claims reviews and will make independent determinations on contractor's entitlement and award of damages where State and Agency agree that litigation is likely to be filed.

10. FHWA retains approval authority over waivers for Buy America provisions. FHWA also retains approval authority over all approvals as defined in FHWA's full federal oversight program if federal-aid participation is desired in that phase of work. State retains approval authority over certain construction CCO's, including but not limited to the following:
 - a) Changes which affect environmental mitigation classification or commitments;
 - b) R/W access control on or impacting State's facilities;
 - c) Changes in the scope of work or extension of the contract limits shown in the Project documents approved by State and FHWA;
 - d) Any contract change altering the Disadvantaged Business Enterprise (DBE) goals or requirements;
 - e) Any impact or changes to traffic mobility including width, height, weight, length, access to the route or additional travel delay on or impacting State's facilities; and
 - f) Any change(s) resulting in less than American Association of State Highway Transportation Officials (AASHTO) Design Standards for projects on the National Highway System.
 - g) Any CCO's, extra work or design changes that affect OR 43 and the west interchange.
11. Agency and State, with Consultant technical advice on Interchange Area Management Plan (IAMP) strategies, have prepared an IAMP for the Project, which was approved on May 13, 2010. An IAMP is a requirement of the State for new or significantly reconstructed interchanges under Oregon Administrative Rule (OAR) 734-051-0155 (6). The purpose of an IAMP is to protect the function of the interchange and consequently the site's investment in the facility. Other reasons for preparing an IAMP include supporting Project development, and addressing facility sufficiency concerns, local road network sufficiency concerns, and land use concerns.
12. Agency shall be responsible for the design and construction of storm-water treatment facilities if required. Maintenance of said storm water facilities will be covered under a separate maintenance agreement with Agency if constructed.
13. No work will be done on or around the Project site or other State R/W without prior written concurrence from State. No construction activities shall commence on the Project until State has concurred on the final design and funding plan for the Project.

14. Agency shall obtain a miscellaneous permit to occupy State R/W through the State District 2A Office, 6000 SW Raab Road, Portland, OR 97221, prior to the commencement of any work on State's facilities. Agency agrees to comply with all provisions of State issued permits to "Occupy or Perform Operations Upon a State Highway" and to also obtain the necessary Highway Approach Permits from State's District 2A Office, 6000 SW Raab Road, Portland, OR 97221, for all public roads and private properties adjacent to the highway according to OAR 734, Division 51. Agency agrees to comply with all provisions of said permit, and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such provisions.
15. Agency agrees that they are not allowed the use of additional R/W for material storage, parking or other uses related to construction, except as defined in the permit. If the contractor needs to use operating R/W for construction, Agency will obtain permission from State's District 2A Office; if Agency needs to use non-operating R/W, Agency will obtain permission through State's R/W Property Management Office.
16. Agency shall require its contractors and subcontractors to provide construction and performance bonding in an amount acceptable to State and covering State's interests of the Project. State may be covered as a dual obligee under bonding provided to Agency as part of the Project. Agency shall submit proof of said bonding to State within fourteen (14) days of receipt from its contractor or subcontractors.
17. Maintenance and power responsibilities shall survive any termination of this Agreement.
18. Agency shall comply with the design standards specified in the current "Highway Mobility Operations Manual" for the OR 43 portion of the project.
19. All design and construction of roadway elements on state right of way are to be done using the standards and guidelines found in the Oregon Highway Design Manual, unless a design exception is granted by State (see Special Provisions No. 20 below). This manual as well as other design information can be found at the following link: <http://www.odot.state.or.us/ffp/hwy/opd/consultant.htm>
20. Any required design exceptions for projects on a state highway are to be sent to the State Region 1 Roadway Section Manager, or assigned designee. State's Region 1 Roadway Section Manager will work with any other affected Region or state unit to evaluate any design exception requests before they are forwarded to the State Traffic and Roadway Engineer in Salem. The authority to approve design exception requests lies with the State Traffic and Roadway Engineer, and, depending on the highway facility, may additionally require federal approval.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when 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 #13762) that was approved by the Oregon Transportation Commission on November 14, 2007.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways; to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program approved by the Director.

Signature page to follow

Agency/State
Agreement No. 22,858-02

MULTNOMAH COUNTY, by and through its
elected officials

By _____
Jeff Cogen, Chair
Board of County Commissioners

Date _____

By _____
N/A
Recorder

Date _____
N/A

APPROVED AS TO LEGAL SUFFICIENCY
Henry H. Lazenby, Jr., County Attorney
For Multnomah County, Oregon
By /s/ Matthew O. Ryan
Assistant County Attorney

Date 11/01/2010

Agency Contact:
Ian Cannon, Engineering Services Adm.
Multnomah County -Bridge
1403 SE Water Avenue
Portland, OR 97214-3333
(503) 988-3757 x223
ian.b.cannon@co.multnomah.or.us

State Contact:
Mark Foster, Local Agency Liaison
Oregon Dept. of Transportation
123 NW Flanders Street
Portland, OR 97209-4012
(503) 731-8288
mark.a.foster@odot.state.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 _____
Local Government Section Manager

Date _____

By _____
Region 1 Manager

Date _____

By _____
District 2A Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

REVISED EXHIBIT A Vicinity Map

Preferred Alternative
Chapter 2. Concept Development, Project Alternatives, and the Preferred Alternative



FIGURE 2.3-1
Preferred Alternative – Alternative D Refined

Agency/State
 Agreement No. 22,858-02

EXHIBIT B
 Oregon Jobs and Transportation Act of 2009
 Progress Billing Form

Agency: _____
 Project: _____
 Agreement No: _____
 Billing Period: _____ to _____

	Costs Incurred This Period	Costs Billed Previously	Total Cost To Date	Participation Rate	Total Amount Claimed	Prior Total Claimed	Amount Claimed This Period	Percent Complete This Phase
Planning								
Engineering Design								
Right of Way								
Construction								
Total								

Submission of this request certifies that, in accordance with the laws of the State of Oregon and under the conditions of approval for the Project identified above, actual costs claimed have been incurred and are eligible pursuant to the Intergovernmental Agreement between Agency and State. Also, no other claims have been presented to, or payment made by, the State of Oregon for those costs claimed for reimbursement.

 Agency Project Liaison

 Date

 (for State use)

I have reviewed the above Project and related costs and, in my opinion, subject to audit, the costs reflect the progress to date and are eligible for reimbursement in the amount of \$_____.

 State Project Liaison

 Date

Revised ATTACHMENT NO. 2

FEDERAL STANDARD PROVISIONS

JOINT OBLIGATIONS 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 further act for Agency in other matters pertaining to the Project. 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 liaison person 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.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow [Title 23 Code of Federal Regulations \(CFR\) 172](#), [Title 49 CFR 18](#), ORS 279A.055, the current State Administrative Rules 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. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to

any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

**REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF TRANSPORTATION
(USDOT) FINANCIAL ASSISTANCE AGREEMENT**

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in [Title 49, CFR, Part 26](#), which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. Disadvantaged Business Enterprises (DBE) Obligations. State and its contractor agree to ensure that DBE as defined in [Title 49, CFR, Part 26](#), have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with [Title 49, CFR, Part 26](#), to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of [Title 49, CFR, Part 26](#), in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. 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.
9. 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, 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 and [provisions of Federal-Aid Policy Guide \(FAPG\)](#).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. 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 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of 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.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

PROJECT ACTIVITIES

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. 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.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.

16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, 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.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. 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. State shall always be responsible for requesting project funding, 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 the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. 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.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

24. 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, unless otherwise agreed to and specified in the intergovernmental agreement.
25. 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 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 canceled. Any unnecessary balance of a cash deposit, 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 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 the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. 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 also pay 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 that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.

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27. 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.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 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 development 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.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$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.
30. 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.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title [23 CFR](#) Parts [1.11](#), [140](#) and [710](#). Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. 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 18.42](#)).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:

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- a) 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 fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. 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 projects are completed in conformance with approved plans and specifications.

RAILROADS

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, 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, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart 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. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. 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.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

STANDARDS

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "[State Highway Design Manual](#)" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "[Oregon Standard Specifications for Highway Construction](#)".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "[Oregon Bicycle and Pedestrian Plan](#)", unless otherwise requested by Agency and approved by State.
40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
41. All plans and specifications shall be developed in general conformance with the current "[Contract Plans Development Guide](#)" and the current "[Oregon Standard Specifications for Highway Construction](#)" and/or guidelines provided.
42. 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.

GRADE CHANGE LIABILITY

43. 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.
44. 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.
45. Agency, if a City, by execution of 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 Agreement.

CONTRACTOR CLAIMS

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.

47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

49. 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 contractors complies with these requirements.

LOBBYING RESTRICTIONS

50. Agency certifies by signing the 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,

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and cooperative agreements) which exceed \$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 \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.