

AMENDMENT NUMBER 01

Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 28483
FLEXIBLE FUNDS PROGRAM 2011
CONGESTION MITIGATION AND AIR QUALITY PROGRAM
ARATA RD: 223RD - 238TH (FAIRVIEW/WOOD VILLAGE)
Multnomah County

This is Amendment No. 01 to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and **MULTNOMAH COUNTY**, acting by and through its elected officials, hereinafter referred to as "County," entered into an Agreement on April 2, 2013. Said Agreement covers production of design plans and construction of improvements for Arata Road including sidewalks, cross-walks, bike facilities, street lighting, landscaping, and green street drainage.

It has now been determined by State and County that the Agreement referenced above shall be amended to: update language; project description; update key milestone dates; update total project cost; update STP funding; update CMAQ funding and add Exhibit "D" to include a description of environmental services to be performed. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.

2. **Amendment to Agreement.**

Exhibit C shall be deleted in its entirety and shall be identified as RESERVED.

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

1. Under such authority, County agrees to the following, hereinafter referred to as "Project."
 - a. Design improvements for Arata Road from NE 223rd Avenue to NE 238th Avenue based on the Arata Road Conceptual Design Plan (ARCDP) dated July 25, 2008.
 - b. Design improvements for a shared use path on an extension of Wood Village Boulevard right of way (ROW) between Arata Road and Halsey Street, which includes a marked pedestrian crossing at Halsey Street consisting of striping, center turn lane refuge and Rectangular Rapid Flash Beacon (RRFB) or other appropriate signaling device, and contact and coordinate with TriMet as to possible modifications to bus stop locations along Halsey Street relative to the

Wood Village Boulevard extension at Halsey Street portion of project improvements.

- c. Construct sidewalks, cross-walks, bike lanes, street lighting, landscaping, and green-street drainage on the north and south side of Arata Road between Wood Village Boulevard and NE 238th Avenue.
- d. Construct sidewalk on south side of Arata Road from NE 223rd Avenue 900 feet eastward.
- e. Construct a shared use path on the Wood Village Boulevard extension between Arata Road and Halsey Street, which includes a marked pedestrian crossing at Halsey Street consisting of striping center turn lane refuge and RRFB or other appropriate device.

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

- 1. Under such authority, County agrees to the following items shown below, hereinafter referred to as "Project." 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. The Project, Key Milestones and Schedule are attached as "Exhibit B," and by this reference made a part hereof.
 - a. Design and construct bicycle and pedestrian facilities for Arata Road from NE 223rd Avenue to NE 238th Avenue as described in paragraphs 1(b) through 1(d) below, and depicted in Exhibit B.
 - b. Construct cross-walks, construct street lighting on the south side of Arata Road, and construct landscaping on the north side of Arata Road between NE 223rd Avenue and NE 238th Avenue.
 - c. Retain the existing 5-foot sidewalk sections and construct new 6-foot wide sidewalk sections with curb and gutter on the south side of Arata Road between NE 223rd Avenue and NE 238th Avenue.
 - d. Design, acquire right-of-way and construct a 10-foot wide shared use path and adjacent green-street drainage on the north side of Arata Road for the full length of the Project.

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

- 2. The total Project cost is estimated at \$4,468,201 which is subject to change. 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. The Project, Key Milestones and Schedule are attached as "Exhibit B," and by this reference made a part hereof. The ARCDP is further described in "Exhibit C," attached hereto and by this reference made a part hereof.

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

2. The total Project cost is estimated at \$4,946,512 which is subject to change. 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. The Project, Key Milestones and Schedule are attached as "Exhibit B," and by this reference made a part hereof.

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

3. Part of this Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The State Flexible Funds Program STP funds for this Project will be limited to \$2,100,000. The Project will be financed with STP funds with County providing the match and any non-participating costs, including all costs in excess of the available federal funds. The State Flexible Funds Program STP funds are available for all phases of the Project.

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

3. Part of this Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The State Flexible Funds Program STP funds for this Project will be limited to \$1,600,000. The Project will be financed with STP funds with County providing the 10.27% match of the STP funds and any non-participating costs, including all costs in excess of the available federal funds. The State Flexible Funds Program STP funds are available for all phases of the Project.

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

4. Part of this Project will be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The CMAQ funds are limited to \$1,669,000, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds. 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.

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

4. Part of this Project will be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The CMAQ funds are limited to \$2,169,000, with County providing the match of 10.27% of the CMAQ funds and any non-participating costs, including all costs in excess of the available federal funds. County shall be responsible for determining the amount of federal funds to be applied to each phase of the Project. County is not guaranteed the use of unspent funds for a particular phase of work. It is County's responsibility to notify

State in advance of State obligating the funds for a subsequent phase if County wants to release funds on the current authorized phase(s) of work.

TERMS OF AGREEMENT, Paragraph 6, Page 3, which reads:

6. County shall make all payments for work performed on the Project, including all construction costs, and invoice State for 100 percent of its costs. State shall reimburse County invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement, any deposited local funds, and any non-participating costs will be the responsibility of the County. State shall perform work in the estimated amount of \$25,000. The work being performed by State includes federal oversight, compliance review, project development and construction monitoring, and Project documentation and accounting closeout. State shall simultaneously invoice FHWA and County for State's Project costs, and County agrees to reimburse State for the federal-aid matching state share and any non-participating costs as determined in accordance with paragraph number 3, above upon receipt of invoice. Failure of County to make such payments to State may result in withholding of County's proportional allocation of State Highway Trust Funds until such costs are paid. County understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.

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

6. County shall make all payments for work performed on the Project, including all construction costs, and invoice State for 100 percent of its costs. State shall reimburse County invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement, any deposited local funds, and any non-participating costs will be the responsibility of the County. State shall perform work in the estimated amount of \$93,000. The work being performed by State includes federal oversight, compliance review, project development and construction monitoring, and Project documentation and accounting closeout. State shall also perform environmental services as outlined in the attached Exhibit "D". The Parties agree that the Environmental Services will be performed by State in a manner consistent with the schedule and cost rates identified in Exhibit D. State shall simultaneously invoice FHWA and County for State's Project costs, and County agrees to reimburse State for the federal-aid matching state share and any non-participating costs as determined in accordance with paragraph number 3, above upon receipt of invoice. Failure of County to make such payments to State may result in withholding of County's proportional allocation of State Highway Trust Funds until such costs are paid. County understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.

Exhibit B, Section 4, Project Milestones, Page 9, which reads:

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones

may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

Table 1: Project Milestones

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of STP Flexible Funds for the Preliminary Engineering phase of Project	12/31/2012
2	Obligation (Federal Authorization) of STP Flexible Funds for the Right-of-Way phase of the Project	12/31/2013
3	Obligation (Federal Authorization) of STP Flexible Funds for the Construction phase of Project	12/31/2013
4	Project Completion based on County issuing Project Acceptance or "Second Note"	12/31/2014

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

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

Table 1: Project Milestones

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of STP Flexible Funds for the Preliminary Engineering phase of Project	6/19/2013
2	Obligation (Federal Authorization) of STP Flexible Funds for the Right-of-Way phase of the Project	2/27/2015
3	Obligation (Federal Authorization) of STP Flexible Funds for the Construction phase of Project	2/28/2016
4	Project Completion based on County issuing Project Acceptance or "Second Note"	12/31/2016

Insert new TERMS OF AGREEMENT, Paragraph 26, to read as follows:

26. RESPONSIBILITIES OF STATE. State shall perform services to assess, evaluate, investigate environmental impacts to County operating right of way and real property identified to be acquired for the Project as further provided in Exhibit D as follows:

- a. 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.
- b. 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.
- c. Hazardous Materials Investigation: Conduct Phase 1 and Phase 2 Level Environmental Contamination investigations of properties identified, and prepare comprehensive reports of said investigations.
- d. 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.
- e. 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.
- f. 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.

Insert new TERMS OF AGREEMENT, Paragraph 27, to read as follows:

27. Both Parties to this Agreement agree to the roles and responsibilities identified in EXHIBIT D – ENVIRONMENTAL SERVICES, and by this reference made a part hereof.

3. **Counterparts.** This Amendment may be executed in two (2) or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Recipient certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

County/State
Agreement No. 28483-01

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 #18019) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

The Oregon Transportation Commission at its March 21, 2012 meeting approved the Flexible Funds Program project application list and delegated authority to the Director of the Oregon Department of Transportation to enter into project agreements.

SIGNATURE PAGE TO FOLLOW

County/State
Agreement No. 28483-01

MULTNOMAH COUNTY, by and through its
elected officials

By _____
Deborah Kafoury, Chair of the
County Board
Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Matthew O. Ryan
Assistant County Attorney

Date _____

Agency Contact:

Ian B. Cannon, County Engineer
Multnomah County Land Use and
Transportation Program
1620 SE 190th Avenue
Portland, OR 97233
503-704-5170
ian.b.cannon@multco.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Director
Date _____

APPROVAL RECOMMENDED

By _____
Planning Section Manager
Date _____
By _____

Active Transportation Section Manager

Date _____
By _____

Region 1 Manager

Date _____
By _____

Region 1 Project Services Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Thomas I. Weatherford 9/18/15
Assistant Attorney General

State Contact:

Tom Weatherford, Local Agency Liaison
ODOT – Region 1
123 NW Flanders Street
Portland, OR 97209
503-731-8238
thomas.l.weatherford@odot.state.or

EXHIBIT D – ENVIRONMENTAL SERVICES

K18019 Arata Rd Roles/Responsibilities							
Resource Discipline	Work Task	Agency Responsibility	Completion Date	Estimate Hours	Estimate Cost/Hour	Estimate Cost	Completion Date
Air Quality	Not required (assumes no signal phase changes)	N/A	N/A			\$ -	N/A
Archaeology	Shovel Testing	ODOT - 7162 (Geo/Envr NRU)		142.45	100	\$3,800	
	PA memo (assumes no resources found)	ODOT - 7162 (Geo/Envr NRU)		16	50	\$800	
	Tribal Consultation	ODOT - 7162 (Geo/Envr NRU)		8	50	\$400	
	University of Oregon	ODOT - 7162 (Geo/Envr NRU)				\$3,300	
							11/15/2014
Biology	NE memo (USFWS)	ODOT - 1622 (R1 Envir)		24	50	\$1,200	
	Botanical Survey	ODOT - 1622 (R1 Envir)		8	50	\$400	
	FAHP Notification	ODOT - 1622 (R1 Envir)		85	50	\$4,250	
	Fish Passage Plan not required	ODOT - 1622 (R1 Envir)	N/A			\$ -	
							2/27/2015
Hazmat	Level 1 Hazmat Report/Testing/Clean Fill Sampling	ODOT - 1634 (Hazmat Unit)				\$12,750	
	Level 2 Hazmat Report (Contingency)	ODOT - 1634 (Hazmat Unit)	N/A			\$ -	
							10/30/2014
Historic	Reconnaissance	ODOT - 1622 (R1 Envir)		16	50	\$800	
	PA memo	ODOT - 1622 (R1 Envir)		24	50	\$1,200	
							7/2/2014
NEPA	Prospectus Part 3	ODOT - 1622 (R1 Envir)		24	50	\$1,200	
	CE Closeout	ODOT - 1622 (R1 Envir)		70	50	\$3,500	
							3/20/2015
Noise	Not required (assumes that the project will not halve the distance between the roadway and a sensitive noise receptor)	N/A	N/A			\$ -	N/A
Right-of-Way	Rights of Entry	N/A	N/A			\$ -	N/A
Wetlands	1. Review of Existing Information and Field Reconnaissance	ODOT - 1622 (R1 Envir)		16	50	\$800	
	2. Wetland/Waters Delineation Field Work	ODOT - 1622 (R1 Envir)		48	50	\$2,400	
	3. Survey of Wetland Boundary	N/A	N/A				
	4. Wetland/Waters Delineation Report	ODOT - 1622 (R1 Envir)		130	50	\$6,500	
	5. Prepare Joint Permit Application	N/A	N/A			\$ -	
	6. Compensatory Mitigation Concepts	N/A	N/A			\$ -	
	7. Compensatory Mitigation Report	N/A	N/A			\$ -	
4(f) / 6(f)	Not required	N/A	N/A			\$ -	N/A
Other	SWMP (must conform to FAHP, ODOT Hydraulics Manual, wellhead protection requirements)	N/A	N/A			\$ -	
	401 Certification	N/A	N/A			\$ -	
	Public Involvement	N/A	N/A			\$ -	
	Flood Plain No Rise Certification	N/A	N/A			\$ -	
	Noise Variance(s)	N/A	N/A			\$ -	
	NPDES 1200-C	N/A	N/A			\$ -	
	Land Use	N/A	N/A			\$ -	
Total						\$ 43,300	N/A