

**LOCAL AGENCY AGREEMENT
MULTIMODAL TRANSPORTATION ENHANCE PROGRAM (MTEP)
Project Name: NE 238th Dr: NE Halsey St – NE Glisan St**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as “State,” and MULTNOMAH COUNTY, acting by and through its elected officials, hereinafter referred to as “Agency,” both herein referred to individually or collectively as “Party” or “Parties.”

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. NE 238th Drive is a part of the county road system under the jurisdiction and control of Agency.

NOW THEREFORE the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

DEFINITIONS

1. “Contract Award” (construction projects) means the issuance of a Notice to Proceed (NTP) to the construction contractor.
2. “Contract Time” means amount of time for completing the bid item work under the contract.
3. “Establishment Period” means the time specified to assure satisfactory establishment and growth of planted materials
4. “Final Acceptance” means written confirmation by Agency and State that the project has been completed according to the contract, with the exception of latent defects and warranty obligations, if any, and has been accepted.
5. “Final Payment” – the amount of final payment will be the difference between the total amount due the contractor and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.
6. “Funding Ratio” means the relationship between MTEP funds and Total Project cost and Other Funds and the Total Project Cost. This ratio is established at the time the agreement is executed and does not change during the course of the project. The ratio governs the obligation of MTEP funds at the time of construction/consultant award or Project Closeout.
7. “Match” means the minimum amount State or Agency must contribute to match the

federal aid funding portion of the project.

8. "MTEP" means Multimodal Transportation Enhance Program and may be funded by a combination of federal and state funds.
9. "Obligation" means Federal Highway Administration (FHWA) approval that allows a specific phase of a project to commence with spending that can be reimbursed with federal funds.
10. "Other Funds" means other funding required to complete the project including but not limited to state, federal, and agency funds.
11. "Project Completion" (construction projects) means Final Acceptance of the project, Final Payment to the contractor has been made by the State and project documentation is completed per the ODOT Construction Manual.
12. "Project Overruns" means the final cost estimate at Contract Award exceeds the estimated Total Project Cost estimate in this Agreement, or the final actual project costs exceeds the final cost estimate at Contract Award.
13. "Project Underrun" means the final cost estimate at Contract Award is below the estimated Total Project Cost in this Agreement, or the final actual project costs are below the final cost estimate at Contract Award.
14. "Project Closeout" means project is ready to close as there are no more expenditures associated with project.
15. "Second Notification" means written acknowledgment by the Engineer of the end of Contract Time in accordance with ODOT Standard Specification 000180.50(g).
16. "Third Notification" means written acknowledgment by the Engineer, subject to Final Acceptance, that as of the date of the notification the Contractor has completed the Project according to the Contract, including without limitation completion of all minor corrective work, equipment and plant removal, site clean-up, and submittal of all certifications, bills, forms and documents required under the Contract.
17. "Total Project Cost" means the estimated amount as shown in this Agreement. This amount will include MTEP funds, local matching funds, and other funds as required to complete the project as stated in this Agreement.

TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to Agency designing, and State acquiring right-of-way for and constructing a project to widen travel lanes and bicycle/pedestrian improvements on NE 238th Drive between NE Halsey and Glisan Streets, hereinafter referred to as "Project." Agency will perform some of the design work and any consultant hired for the preliminary engineering phase will be hired through the State. All preliminary engineering work by Agency will be reviewed by State to ensure federal requirements are met. Agency will perform day to day project management and ensure the Project moves

forward. The location of the Project is as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The Project is funded with Regional Economic Opportunity Fund (REOF) administered by the Portland Urbanized Area Metropolitan Planning Organization (Metro) and with Multimodal Transportation Enhance Program (MTEP) funds administered by the State. MTEP funds are provided under Title 23, United States Code and may include a combination of federal and state funds.
3. The Total Project Cost is estimated at \$8,421,944, which is subject to change. REOF funding for this Project shall be limited to \$1,000,000. Agency shall be responsible for the 10.27 percent match for these funds. Metro REOF funds will be spent on the Project first and MTEP funds will be applied once REOF funds have been exhausted.
4. The MTEP federal and state funding for this Project shall be limited to \$6,549,187. Agency shall be responsible for all remaining costs, including the 10.27 percent match for all MTEP eligible costs, any non-participating costs, and all costs in excess of the available federal or state funds. The MTEP Funding Ratio for this Project is 89.62% of MTEP funds to 10.38% Agency funds and applies to Project Underruns. The Funding Ratio does not apply in the case of Project Overruns.
5. If, at the time of Contract Award or Project Closeout, the Project Underruns the estimated Total Project Cost in this Agreement, MTEP funding and Other Funds will be obligated proportionally based on the Funding Ratio. Any unused MTEP funds, will be retained by State, and will not be available for use by Agency for this Agreement or any other projects.
6. Project Overruns which occur at the time of Contract Award, or at the time of Project Closeout is the responsibility of the Agency.
7. Project decisions regarding design standards, design exceptions, utility relocation expenses, right of way needs, preliminary engineering charges, construction engineering charges, and Contract Change Orders as applicable shall be mutually agreed upon between Agency and State, as these decisions may impact the Total Project cost. However, State may award a construction contract at ten (10) % over engineer estimate without prior approval of Agency.
8. The scope, schedule, progress report requirements, and Project Change Request process are described in Exhibit B, attached hereto and by this reference made a part hereof. Agency agrees to the conditions set forth in Exhibit B.
9. State will submit the requests for federal funding to Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
10. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.

11. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
12. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
13. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor 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 any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor 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 claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
14. This Agreement may be terminated by mutual written consent of both Parties.
15. 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. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

- e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
16. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
17. a. Information required by 2 CFR 200.331(a), except for (xiii) Indirect cost rate, shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to Agency with the Notice to Proceed.
- b. The indirect cost rate for this project at the time the agreement is written is 43.49% and may change upon notice to ODOT and ODOT's subsequent written approval.
18. 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 shall control over the attachments, and Attachment 1 shall control over Attachment 2.
19. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
20. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
21. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
22. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
23. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the

attached Exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

24. State's Contact for this Agreement is Kelly Brooks, Interim Region 1 Policy and Development Manager, ODOT, 123 NW Flanders Street, Portland, Oregon 97225 (503) 731-3087, Kelly.Brooks@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
25. Agency's Contact for this Project is Ian Cannon, 1620 SE 190th Avenue, Portland, OR 97233, Ian.B.Cannon@multco.us, 503-988-3595, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #18833) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently by amendment to the STIP).

Signature Page to Follow

MULTNOMAH COUNTY, by and through
its elected officials

By _____

Title _____

Date _____

By _____

Title _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

Agency Counsel

Date _____

Agency Contact:

Ian Cannon
1620 SE 190th Avenue
Portland, OR 97233
503-988-3595
Ian.B.Cannon@multco.us

State Contact:

Kelly Brooks, Interim Region 1 Policy and
Development Manager
123 NW Flanders Street
Portland, OR 97225
503.731.3087
Kelly.BROOKS@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 _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

Assistant Attorney General

Date _____

EXHIBIT A – Project Location Map

NE 238TH DRIVE: HALSEY STREET TO GLISAN STREET
HIGHWAY MOBILITY

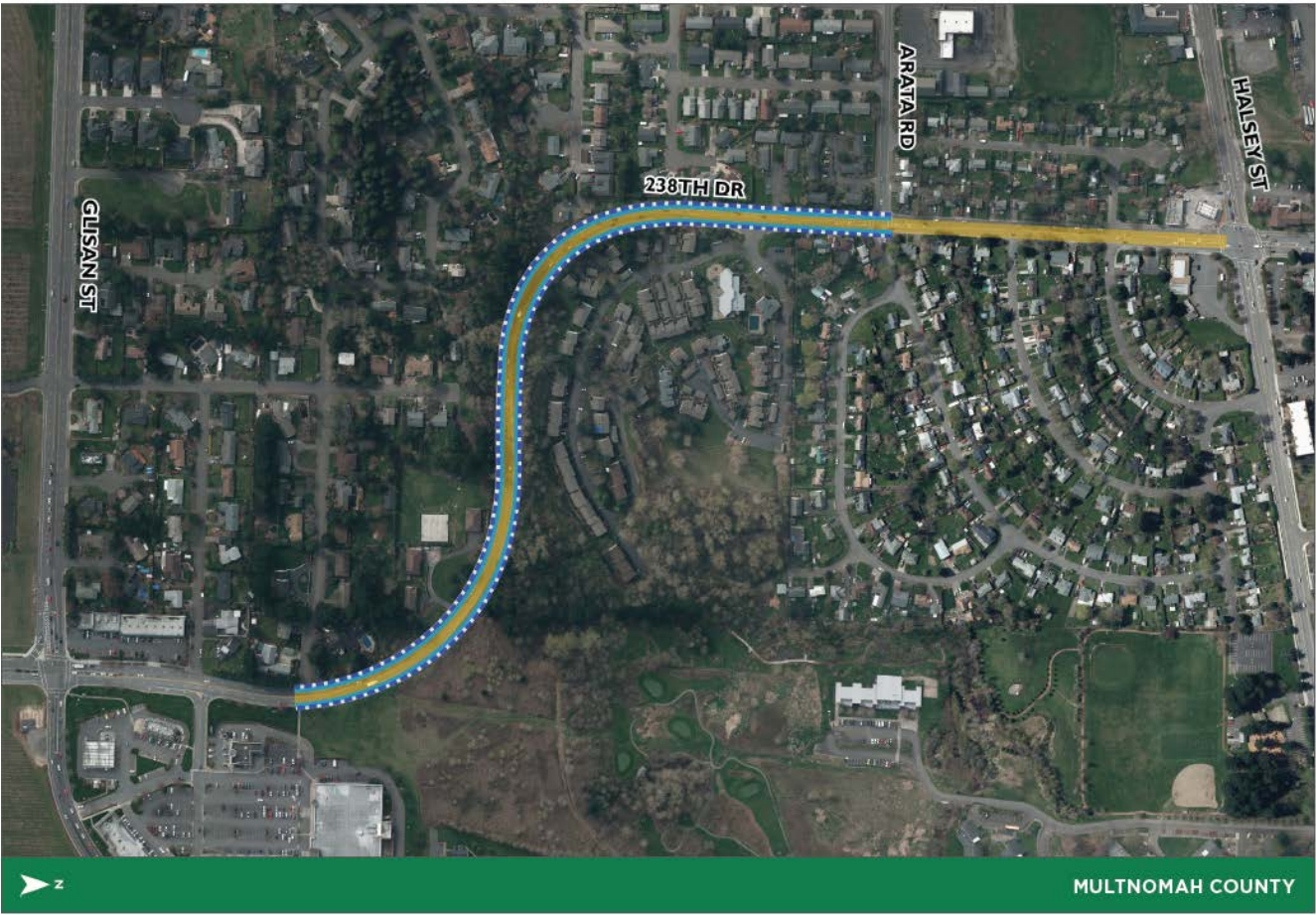


EXHIBIT B

Project Cost Estimate, Progress Reports and Project Change Request Process

Agreement No. 31099

Key Number: 18833

Project Name: NE 238th Dr: NE Halsey St – NE Glisan St

1. Project Description and Deliverables

Agency will design, and State will acquire right-of-way for and construct widened travel lanes and bicycle/pedestrian improvements on NE 238th Drive between Halsey and Glisan Streets. Agency is responsible for project management and ensuring the Project moves forward. Deliverables include:

- Widening of the northbound lane and southbound climbing and passing lanes
- Constructing shared-use sidewalks on both sides of the roadway
- Constructing retaining walls throughout project limits
- Acquiring right-of-way for access changes and storm water improvements
- Obtaining any necessary design exceptions from FHWA due to the fact NE 238th is a component of the NHS system

2. This Project is subject to progress reporting and project change process as stated below.

3. **Monthly Progress Reports (MPR)** - Agency shall submit monthly progress reports using MPR Form 734-2935, incorporated by reference and made a part of this Agreement. The Monthly Progress Report is due by the 5th day of each month, starting the first month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project's construction contract.

The fillable MPR form and instructions are available at the following address:

http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

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 – Construction Project

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of federal funds for the Preliminary Engineering phase of the Project	8/15/16
2	Obligation (Federal Authorization) of federal funds for the Right of Way phase of the Project	8/15/17
3	Obligation (Federal Authorization) of federal funds for the Construction phase of the Project	8/15/18

5. Requirements for Construction Projects

- a. **Second Notification** –Upon completion of on-site work Second Notification shall be issued. Second Notification is further defined in the Definitions Section of this Agreement. The anticipated and actual date for issuance of Second Notification shall be reported in the required monthly report as described in paragraph 3, above.
- b. **Third Notification** – Issuance of Third Notification must be received within 120 days from the issuance of Second Notification as stated above with the exception of any Establishment Period noted in the Construction Contract or any remaining responsibilities of the Contractor. If Third notification is not issued within the required timeframe, Consequences for Non-Performance, paragraph 8 below may apply.

6. Project Change Request (PCR) Process - Agency must obtain approval from State's Contact for changes to the Project's scope, schedule, or budget as specified in paragraphs 6a, 6b and 6c, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

- a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit). A significant change in project scope includes any scope element or item that:
 - a. Would increase project cost by 10% or \$100,000, whichever is less;
 - b. Is outside of the intent of the current project scope, as determined by the ODOT Program Manager; or,
 - c. Does not meet the minimum standards of the American Association of State Highway and Transportation Officials (AASHTO) or the Manual on Uniform Traffic Control Devices (MUTCD).
- b. **Schedule**– A PCR is required if Agency or State's Contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
- c. **Budget** – Total Project Cost and approved funds for the Project are controlled by Terms of Agreement, paragraph 2 of this Agreement.

7. PCR Form - Agency must submit all change requests using PCR Form 734-2936, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion of State's Area Manager.

The fillable PCR form and its instructions are available at the following web site:
http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

8. Consequence for Non-Performance - If Agency fails to fulfill its obligations in paragraphs No. 3 through No. 7 above, or does not assist in advancing the Project or

State/Agency

Agreement No. 31099

perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's managed funding programs, (b) withdrawing unused Project funds, and (c) terminating this Agreement as stated in Terms of Agreement, paragraph No. 15 of this Agreement. State may also choose to invoice Agency for expenses incurred by State for staff time to assist in completion of the final Project documentation and issuance of Third Notification.

After recording, return to:

EXHIBIT C
MEMORANDUM OF AGREEMENT AND ACKNOWLEDGEMENT OF FEDERAL AND STATE ASSISTANCE
[State Recording Authority: ORS 93.710 and ORS 205.130(2)]

Agreement Number: 31099

Project Name: **NE 238th Dr: NE Halsey St – NE Glisan St**

Key Number: 18833

Local Agency Agreement No. _____ between the (Insert Agency Name) and the State of Oregon, Department of Transportation was executed on _____. Pursuant to paragraph _____, Terms of Agreement, page _____ of the Local Agency Agreement, upon the recording of this document, the (Insert Agency Name) received federal and state funds for the Project described in the Local Agency Agreement. The property and assets under the jurisdiction of the (Insert Agency Name) were improved with the assistance from the United States Government and the State of Oregon, Department of Transportation. Such assistance was provided to (Insert Agency Name), in reimbursement of costs associated with the (Insert Agency Name). The use and disposition of said property is subject to the terms of the above noted Local Agency Agreement, copies of which may be obtained from the Director of ODOT and is also subject to 2 CFR part 1201. A description of the improved property is attached.

(Insert Agency Name)

By: _____
(Name of person)

(Notary Stamp)

Title: _____

State of Oregon: County of _____

Signed or attested before me on _____ by _____
(Date) (name(s) of person(s))

_____ My commission expires on _____.

STATE OF OREGON, DEPARTMENT OF TRANSPORTATION

By: _____
Title: Active Transportation Section Manager

(Notary Stamp)

State of Oregon: County of Marion

Signed or attested before me on _____ by _____
(Date) (name(s) of person(s))

_____ My commission expires on _____.

Oregon Department of Transportation; 555 13th Street NE; Salem, OR 97301-4178

ATTACHMENT NO. 1 to Agreement No. 31099
SPECIAL PROVISIONS

1. State shall be responsible for delivering all aspects of the Project.
2. Agency agrees to manage the work performed by the consultant and the construction contractor and reimburse State for payment of any costs that are not eligible as federal participating costs or that are not included as a part of the total cost of the Project.
3. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
4. State will perform Project oversight work throughout the duration of the Project and shall provide a preliminary estimate of State costs for this work. Prior to the start of each Project phase State shall provide an updated estimate of State costs for that phase. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction and include, but are not limited to, contract administration, coordinating plan review, and attending meetings as necessary.. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per this Agreement.
5. State and Agency agree that the useful life of this Project is defined as 20 years.
6. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
7. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach. Agency will be ineligible to receive or apply for any Title 23, United States Code funds until State receives full reimbursement of the costs incurred.

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 2 CFR 200.3303.

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 the requirements stated in the Single Audit Act. Agencies expending \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, shall have a single organization-wide audit conducted in accordance with the Single Audit Act of 1984, PL 98-502 as amended by PL 104-156 and subject to the requirements of 49 CFR Parts 18 and 19. Agencies expending \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014 shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F.

Agencies expending less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials based on the records retention period identified in the Project Agreement. 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 forty-five (45) days 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 forty-five (45) days from date that costs are incurred. Invoices submitted after 45 days may not be eligible for reimbursement by FHWA. 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 ((2 CFR 200.333(c))).
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, 2 CFR part 1201, 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. 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 24 and 26; 2 CFR 1201, 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 grants 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.