

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 31691
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 the 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 Local Agency Certification Program Agreement No. 29110 incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with Agency for the performance of work on this improvement Project. The Certification Program allows State to certify a Local Agency's procedures and delegates authority to the certified Local Agency to administer federal-aid projects.
2. NE 238th Drive is a part of the county road system under the jurisdiction and control of Agency.
3. State and Agency have entered into Local Agency Agreement No. 31099 covering this Project. Agency will now deliver this Project as a certified agency under this Agreement No. 31691. This Agreement shall supersede and replace Agreement No. 31099 and its supplements in its entirety. Agreement No. 31099 is terminated upon execution of this Agreement. Bills for preliminary engineering work incurred prior to the replacement of Agreement No. 31099 shall be invoiced by Agency and paid for by State under this Agreement.
4. The Project in this Supplemental Project Agreement is one of the required test projects Agency must perform in order to obtain certification described in Local Agency Certification Program (Certification Program) Agreement No. 29110.

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 construction contract arising under this Agreement.
3. "Final Acceptance" means written confirmation by Agency and State that the project has been completed according to the contract, with the exception of any latent defects and

warranty obligations, if any, and has been accepted.

4. "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.
5. "Match" means the minimum amount Agency must contribute to match the federal aid funding portion of the project.
6. "MTEP" means Multimodal Transportation Enhance Program and may be funded by a combination of federal and state funds.
7. "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.
8. "Other funds" means other funding required to complete the project including but not limited to state, federal, and agency funds.
9. "Project Completion" (construction projects) means Final Acceptance of the project, Final Payment to the contractor has been made and project documentation is completed per the ODOT Construction Manual.
10. "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.
11. "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.
12. "Project Closeout" means project is ready to close as there are no more expenditures associated with project.
13. "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, State and Agency agree to Agency designing, acquiring right-of-way for and constructing a project to widen travel lanes and bicycle/pedestrian improvements, including curb ramps, on NE 238th Drive between NE Halsey and Glisan Streets, hereinafter referred to as "Project". The location of the Project is 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.
5. 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.
6. If, at the time of Contract Award or Project Closeout, there is a Project Underrun, 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.
7. Project Overruns which occur at the time of Contract Award or at the time of Project Closeout are the responsibility of the Agency.
8. If State performs work on the Project, State will provide Agency with a preliminary estimate for the cost of State's work. Prior to the start of each Project phase, State will provide an updated estimate of State's costs from that phase to Agency. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per the Terms of this Agreement. 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. Agency 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 Agency 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 Agency. State shall simultaneously invoice FHWA and Agency for State's Project costs, and Agency agrees to reimburse State for the federal-aid matching state share and any non-participating costs as determined in accordance with paragraph numbers 3 and 4, above upon receipt of invoice. Failure of Agency to make such payments to State may result in withholding of Agency's proportional allocation of State Highway Trust Funds until such costs are paid. Agency understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.

10. 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.
11. As required by 2 CFR 200.331(a)(4), the indirect cost rate for this Project at the time the Agreement is written is 43.49% and may change upon notice to State and State's subsequent written approval. Agency may have other indirect cost rates for departments and or disciplines that have been approved for use by their cognizant agency and ODOT and these rates may be used on the Project, as applicable.
12. Agency shall invoice State using the current indirect cost rate on file with State at the time the work is performed, except that if Agency has selected zero percent (0%), Agency shall invoice ODOT using the zero percent rate.
13. Agency shall perform: formal consultant selection, design (excluding bridge design), advertise, bid, award the construction contract, and perform construction contract administration. Agency understands that this Project is a test project for all of these disciplines. Agency shall comply with all of the terms and conditions found in Certification Program Agreement No. 29110.
14. Agency shall:
 - a. Utilize ODOT standards to assess and ensure Project compliance with the Americans with Disabilities Act of 1990 (ADA), including ensuring that all sidewalks, curb ramps, pedestrian activated signals and transit stops meet current ODOT Highway Design Manual standards;
 - b. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps and pedestrian activated signals using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and current ODOT Curb Ramp Inspection form;
 - c. At Project completion, send an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded or improved as part of the Project. The completed form is the documentation required from the Agency showing that each curb ramp meets ODOT standards and is ADA compliant. State's fillable Curb Ramp Inspection Form and instructions are available at the following address: <http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx> ; and
 - d. Promptly notify State of Project completion and allow State to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along the portion of the state highway identified in Exhibit C prior to acceptance of Project by Agency and prior to release of any Agency contractor.
15. Agency shall, at its own expense, periodically inspect and maintain any sidewalks, curb ramps and pedestrian activated signals on portions of the Project under Agency's maintenance jurisdiction upon Project completion and throughout the useful life of the

Project to ensure continuing compliance with ADA standards. This provision shall survive termination of this Agreement.

16. State will submit the requests for federal funding FHWA. The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at Agency expense. State's Regional Local Agency Liaison or designee will provide Agency with a written notice to proceed when FHWA approval has been secured and funds are available for expenditure on this Project.
17. 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.
18. 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.
19. Local Agency Certification Program Agreement No. 29110 was fully executed on November 16, 2015. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
20. This Agreement shall supersede and replace Agreement No. 31099 and its supplements in its entirety. Agreement No. 31099 is terminated upon execution of this Agreement. Bills for preliminary engineering work incurred prior to the replacement of Agreement No. 31099 shall be invoiced by Agency and paid for by State under this Agreement.
21. 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.
22. State may conduct periodic inspections during the useful life of the Project to verify that the Project is being properly maintained and continues to serve the purpose for which federal funds were provided.
23. State and Agency Agree that the useful life of the Project is 20 years.
24. This Agreement may be terminated by mutual written consent of both Parties.
25. 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.
26. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
27. Agency, as a recipient of federal funds, pursuant to this Agreement with 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 State to return funds to the FHWA, hold harmless and indemnify 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.
28. 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.
29. Agency certifies and represents that the individual(s) signing this Agreement have (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.
30. 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.
31. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 29110, as amended and all attached exhibits constitutes 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.

32.State's Project Liaison for the Agreement is Reem Khaki, 123 NW Flanders Street, Portland, Oregon 97225 (503) 731-8501, reem.d.khaki@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.

33.Agency's Project Liaison for this Agreement 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 approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

MULTNOMAH COUNTY, acting by and
through its elected officials

By _____

Title _____

Date _____

By _____

Title _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

Agency Legal Counsel

Date _____

Agency Project Liaison:

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

State Project Liaison:

Reem Khaki
123 NW Flanders Street
Portland, Oregon 97225
(503)731-8501
reem.d.khaki@odot.state.or.us

STATE OF OREGON, acting by and
through its Department of Transportation

By _____

Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____

Certification Program Manager

Date _____

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

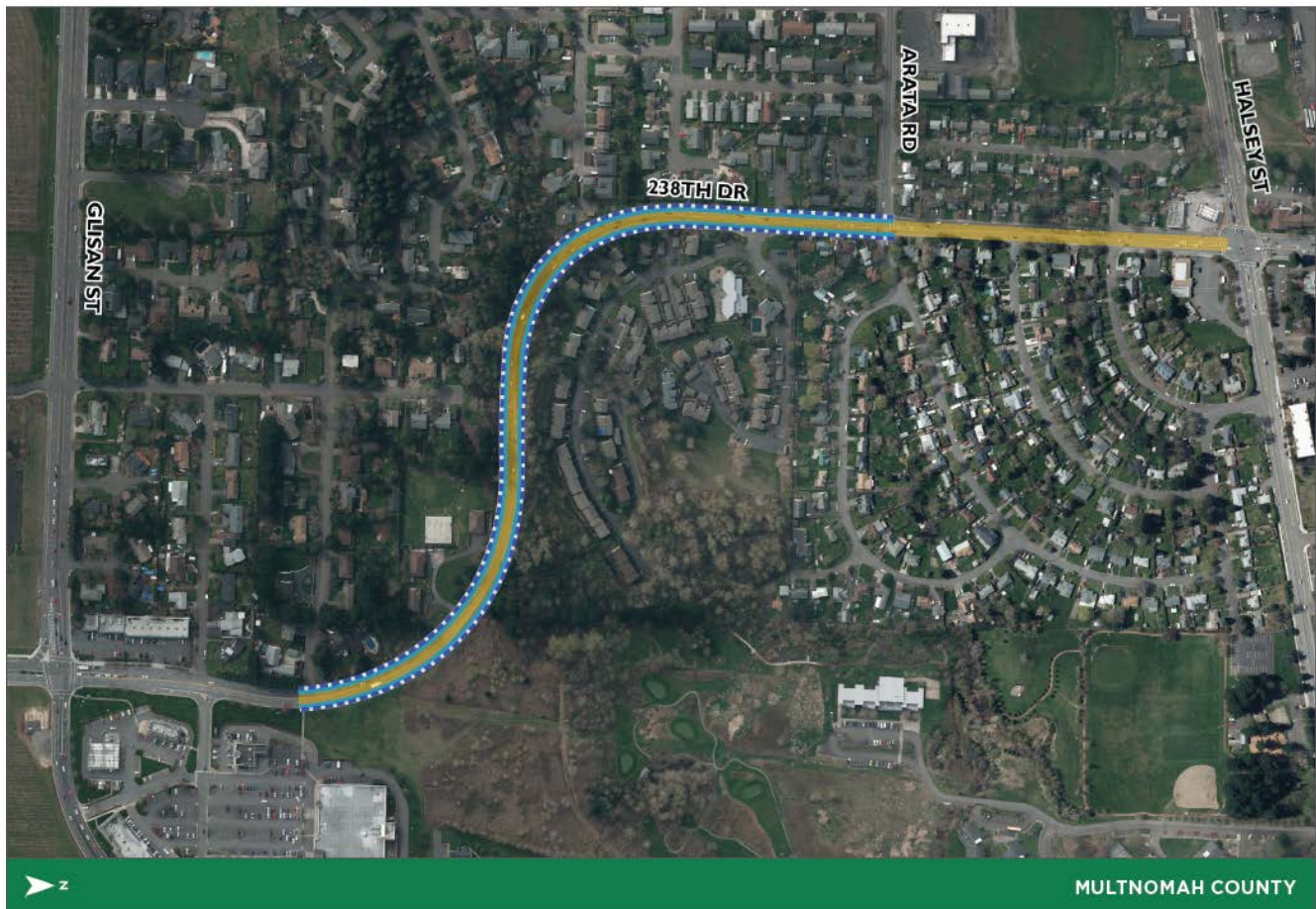


EXHIBIT B

Project Progress Reports and Project Change Request Process

Agreement No. 31691

Key Number: 18833

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

1. Project Description

Agency will design, acquire right-of-way for and construct widened travel lanes and bicycle/pedestrian improvements, including curb ramps, on NE 238th Drive between Halsey and Glisan Streets. 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 Project completion. .

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

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 Project	9/15/16
2	Obligation (Federal Authorization) of federal funds for the Right of Way phase of the Project	10/15/17
3	Obligation (Federal Authorization) of federal funds for the Construction phase of Project	10/15/18

5. **Project Change Request (PCR) Process** - Agency must obtain approval from State's Liaison for changes to the Project's scope, schedule, or budget as specified in paragraphs 5a, 5b and 5c, 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).
 - b. **Schedule**— A PCR is required if Agency or State's Project Liaison 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.
6. **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 website:
http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

7. **Consequence for Non-Performance** - If Agency fails to fulfill its obligations in paragraphs No. 3 through No. 6 of this Exhibit B, or does not assist in advancing the Project or 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, Paragraphs No. 25a and 25b of this Agreement.