

**LOCAL AGENCY AGREEMENT  
CONGESTION MITIGATION AND AIR QUALITY PROGRAM  
HIGH PRIORITY PROJECT  
Springwater Trail: SE Umatilla to SE 19th**

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 CITY OF PORTLAND, 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. SE Umatilla Street and SE 19<sup>th</sup> Avenue are a part of the Portland city street system under the jurisdiction and control of Agency.
2. By the authority granted in ORS 190.110, 366.572, and 366.576, State may enter into cooperative agreements with the 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.
3. Under provisions of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which provides authorization for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; State is required to set aside federal funds over the five (5) years of SAFETEA-LU for projects to address High Priority Projects and Transportation Improvement project activities.
4. The Project, as further defined below, will bridge a 4800 foot long trail gap between the Willamette Greenway Trail (Eastbank Esplanade – SE Umatilla Street) and the Springwater Corridor Trail (Three Bridges Section) which starts at SE 19<sup>th</sup> Street and connects to the Springwater Corridor Trail. The Springwater Corridor Trail is designated as an Oregon State Recreational Trail in the State Comprehensive Outdoor Recreation Plan.

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

Agency/State  
Agreement No. 25,048

## TERMS OF AGREEMENT

1. Under said provisions, Agency agrees to develop a bicycle boulevard on SE Umatilla Street and SE 19<sup>th</sup> Avenue to provide safe on-street connections between trail segments of the Willamette Greenway Trail and the Springwater Corridor Trail hereinafter referred to as "Project." Project includes new signalization at SE 13<sup>th</sup> Avenue on Umatilla Street and SE Tacoma Street on SE 19<sup>th</sup> Avenue, crosswalks, stormwater management green curb extensions, striping, and signage. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The total Project cost is estimated at \$2,458,308 which is subject to change.
  - a. This Project shall 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 \$1,237,000. Eligible costs for the Project will be reimbursed at the full federal share or until the \$1,237,000 limit is reached. Agency shall be responsible for the match for the federal funds and any portion of the Project which is not covered by federal funding. The federal pro-rata funding for the project is 89.73 percent and provided federal funds will be subject to annual obligation limitations and possible rescissions. Agency shall be responsible for determining the amount of federal funds to be applied to each phase of the Project. Agency is not guaranteed the use of unspent funds for a particular phase of work. It is Agency's responsibility to notify State in advance of State obligating the funds for a subsequent phase if Agency wants to release funds on the current authorized phase(s) of work.
  - b. The Project shall be conducted as a part of the High Priority Projects Program and Transportation Improvements authorized under SAFETEA-LU. The High Priority Projects and Transportation Improvement funds available for the Project are estimated at \$654,000 with Agency providing the match for the federal funds and any non-participating costs, including all costs in excess of the available federal funds. The federal pro-rata funding for the project is 89.73 percent and provided federal funds will be subject to annual obligation limitations and possible rescissions. The funds shall be used for the construction of the Project.
3. The Federal Bill Number and Project Description are as shown in the table below:
 

Federal Bill Number	Project Description
3154	Regional Trails Program
4. The federal funding for this Project is contingent upon approval by the FHWA. Any

Agency/State  
Agreement No. 25,048

- work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
5. 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.
  6. At the beginning of each Federal Fiscal Year, Agency shall complete and provide State a CMAQ reporting form (an example of which is attached hereto as Exhibit B and by this reference made a part hereof).
  7. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. The attached Special Provisions may contain additional termination conditions.
  8. This Agreement may be terminated by mutual written consent of both Parties.
  9. 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 State is prohibited from paying for such work from the

Agency/State  
Agreement No. 25,048

planned funding source.

10. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
11. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
12. 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.
13. 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.
14. 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.
15. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. 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.

Agency/State  
Agreement No. 25,048

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2008-2011 Statewide Transportation Improvement Program, (Key #14407) that was approved by the Oregon Transportation Commission on November 14, 2007.

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

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways; Deputy Director, Central Services and the Chief of Staff, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Oregon Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director. The Director may also delegate to other Administrators the authority to execute intergovernmental agreements over \$75,000 for specific programs such as transportation safety, growth management and public transit.

**SIGNATURE PAGE TO FOLLOW**

Agency/State  
Agreement No. 25,048

**CITY OF PORTLAND**, by and through  
its elected officials

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

By \_\_\_\_\_  
Auditor

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By Benjamin Walters  
City Counselor **CHIEF DEPUTY CITY ATTORNEY**

Date December 3, 2010

**Agency Contact:**

Dan Layden  
1120 SW 5<sup>th</sup> Ave, Rm 800  
Portland, Oregon 97204  
(503) 823-2804  
dan.layden@portlandoregon.gov

**State Contact:**

Mark Foster  
123 NW Flanders St.  
Portland, OR 97209  
(503) 731-8288  
mark.a.foster@odot.state.or.us

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

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

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief Engineer

Date \_\_\_\_\_

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

Date \_\_\_\_\_

By \_\_\_\_\_  
District 2B Manager

Date \_\_\_\_\_

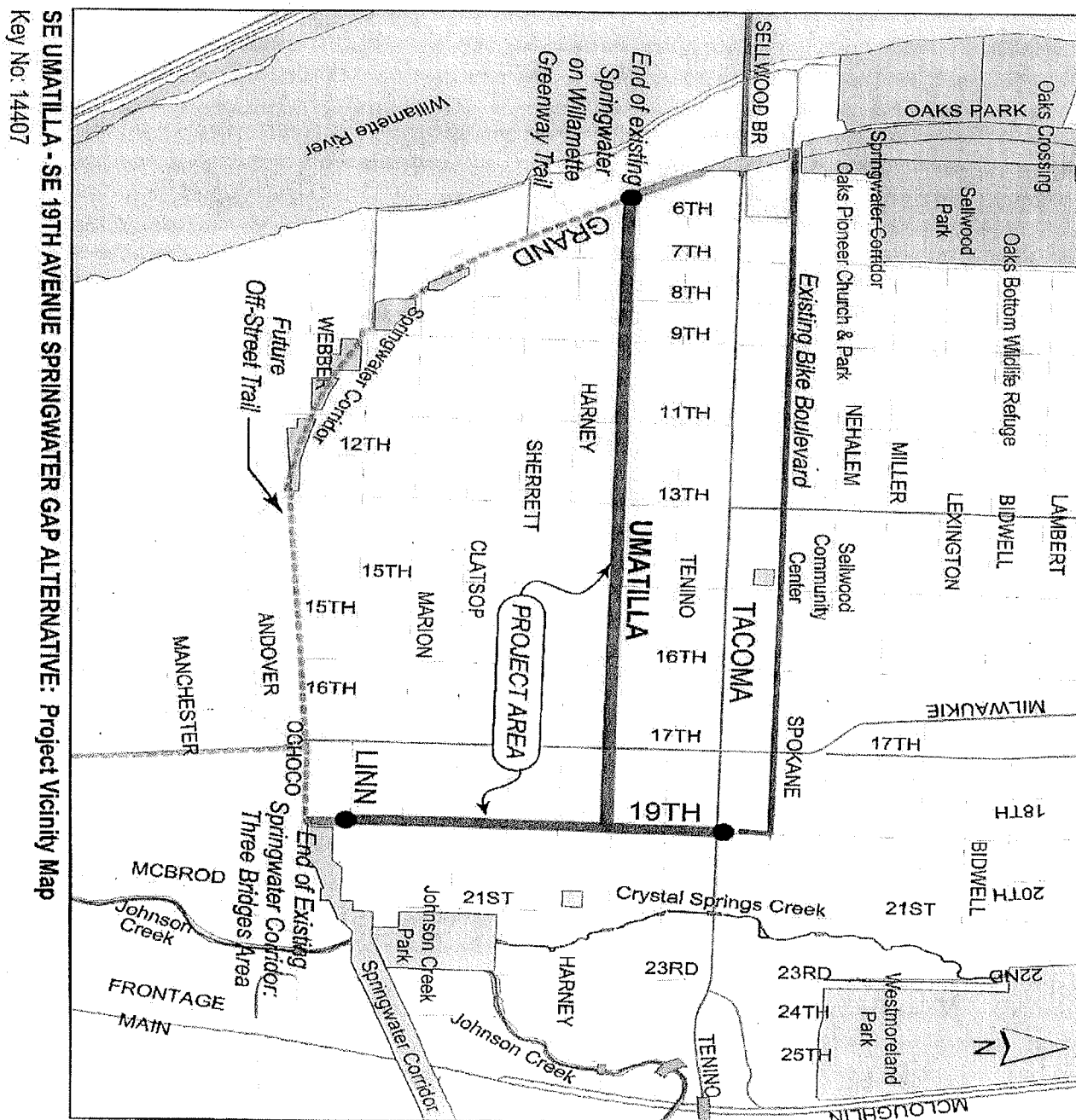
**APPROVED AS TO LEGAL SUFFICIENCY**

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

Date \_\_\_\_\_

Agency/State  
Agreement No. 25,048

### Exhibit A – Project Location Map



## Exhibit B: Guidance - CMAQ Reporting Form

### Purpose

The purpose of the CMAQ Reporting Form is to provide a simple and consistent CMAQ reporting mechanism to serve the needs of FHWA, MPOs and non-MPO local agencies, ODOT Region Local Agency Liaisons (LALs), ODOT Highway Finance Office (HFO), and ODOT CMAQ Program staff in the Geo-Environmental Section. Complete one form for each CMAQ-funded project (new or continuing). Within 45 days of the beginning of each Federal fiscal year, submit an electronic copy of each completed or updated CMAQ Reporting Form to ODOT CMAQ Program staff.

### Users

The primary users of this form include MPOs and local agencies (with Non-Attainment or Maintenance Areas that qualify for CMAQ funding), ODOT LALs, and ODOT CMAQ Program staff. Other participants in the CMAQ annual reporting process include ODOT HFO as well as FHWA Oregon Division and Headquarters.

### CMAQ Reporting and Program Guidance

FHWA CMAQ Improvement Program web site:

<http://www.fhwa.dot.gov/environment/cmaqpgs/index.htm>

FHWA CMAQ Project Tracking System User's Guide:

<http://www.fhwa.dot.gov/environment/cmaqpgs/tracksys/index.htm>

FHWA CMAQ Program Guidance (10/31/06):

<http://www.fhwa.dot.gov/environment/cmaqpgs/06guide.htm>

ODOT STIP User's Guide (see CMAQ on page VI-9):

<http://oregon.gov/ODOT/TD/TP/stipGuide.shtml>

EPA's Transportation and Air Quality Program: <http://www.epa.gov/otaq/>

### CMAQ Reporting Process

1. At the beginning of each Federal Fiscal Year, MPOs and local agencies, in conjunction with ODOT Region LALs, will complete the CMAQ Reporting Form for each proposed or continuing CMAQ project. Emission benefits are reported in kg/day, and are based on an average operating day in the first year the project is operational. ODOT CMAQ Program staff will assist, as necessary, in form preparation. *NOTE: After initial completion of one CMAQ Reporting Form per CMAQ project, subsequent reporting will usually involve only minor adjustments to the original electronic form. Each electronic file should be named according to the ODOT Key Number, where possible.*
2. MPOs and local agencies will submit an electronic copy of each CMAQ Reporting Form to the ODOT Region LAL.
3. ODOT Region LALs will review CMAQ Reporting Forms and forward an electronic copy of each CMAQ Reporting Form to ODOT GeoEnvironmental Section.
4. ODOT GeoEnvironmental enters data from each CMAQ Reporting Form into the FHWA CMAQ Project Tracking System for annual reporting of emissions benefits.



**Exhibit B - CMAQ Reporting Form**

**Directions:** Complete one form per each proposed or continuing CMAQ-funded project. Within 45 days after the beginning of each Federal fiscal year, submit (or update and resubmit) electronic copies of the form to ODOT CMAQ Program staff. Refer to Attachment A (Guidance – CMAQ Reporting Form) for clarification of CMAQ data requested and the CMAQ reporting process. For further assistance, please contact ODOT CMAQ Program staff at (503) 986-4200.

Project Title: \_\_\_\_\_

Project Year: \_\_\_\_\_

CMAQ Project ID # (if known): \_\_\_\_\_

STIP Project ID #: \_\_\_\_\_

FMIS Project ID #: \_\_\_\_\_

TIP / TSP Project ID # (optional): \_\_\_\_\_

CMAQ Obligation \$ (this Fiscal Year): \_\_\_\_\_

Total Project \$ (this Fiscal Year): \_\_\_\_\_

MPO or local jurisdiction: \_\_\_\_\_

**Non-Attainment or Maintenance Area (check one)**

- ☐ Portland Metro Area
- ☐ Medford/Ashland Metro Area
- ☐ Klamath Falls Area
- ☐ Grants Pass Area
- ☐ La Grande Area
- ☐ Lakeview Area
- ☐ Oakridge Area

**Please select one of the following:**This is a new CMAQ project proposal. ☐This is a continuing CMAQ project. ☐Is this a planning or project development activity? Yes ☐ No ☐Is this an outreach activity? Yes ☐ No ☐Is this a TCM in an approved SIP? Yes ☐ No ☐Is this an Experimental Pilot Project? Yes ☐ No ☐Is this a Public-Private Partnership? Yes ☐ No ☐**Emissions Benefit Provided by Project:**

VOC emissions benefit (kg/day): \_\_\_\_\_

» Qualitative Analysis? Yes ☐ No ☐

CO emissions benefit (kg/day): \_\_\_\_\_

» Qualitative Analysis? Yes ☐ No ☐NO<sub>x</sub> emissions benefit (kg/day): \_\_\_\_\_» Qualitative Analysis? Yes ☐ No ☐

PM-10 emissions benefit (kg/day): \_\_\_\_\_

» Qualitative Analysis? Yes ☐ No ☐

*NOTE: Please attach supporting documentation of quantitative analysis or explanation of qualitative analysis method*

**Project Reporting Category (check one main category and select appropriate subcategory from dropdown list:**

- |  |                             |
|--|-----------------------------|
| <input type="checkbox"/> Demand Management         | Subcategories: (select one) |
| <input type="checkbox"/> I/M and Other TCMs        | Subcategories: (select one) |
| <input type="checkbox"/> Pedestrian/Bicycle        | Subcategories: (select one) |
| <input type="checkbox"/> Shared Ride               | Subcategories: (select one) |
| <input type="checkbox"/> Traffic Flow Improvements | Subcategories: (select one) |
| <input type="checkbox"/> Transit                   | Subcategories: (select one) |
| <input type="checkbox"/> Other / No Category       |                             |
| <input type="checkbox"/> Deobligation              |                             |

**Project Description:** \_\_\_\_\_

*NOTE: Project Description should include project length, names of relevant roadways, a concise narrative of work to be performed, etc. Use more pages if necessary*

**Additional Project Information:** \_\_\_\_\_

*NOTE: Please provide any additional descriptive information regarding Project Reporting Subcategory. Use more pages if necessary.*

**Changes in Project Information:** \_\_\_\_\_

*NOTE: Indicate previous project key #s, project name changes, and changes to project scope and design since eligibility was determined. Use more pages if necessary.*

**ATTACHMENT NO. 1 TO AGREEMENT No. 25,048****SPECIAL PROVISIONS**

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, assist State with acquisition of necessary right of way and/or easements, arrange for all utility relocations or reconstruction, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection, project manager services for administration of the contract and preparation of necessary documentation to allow State to make all contractor payments.
3. State may make available Region 1's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
4. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, the Project cost is defined as the engineer's estimate plus 10 percent.
5. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
6. 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.
7. Maintenance and power responsibilities shall survive any termination of this Agreement. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
8. Agency shall, upon completion of the Project, maintain the bike path and supply power for Project illumination at its own expense.

## **ATTACHMENT NO. 2**

### **FEDERAL STANDARD PROVISIONS**

#### **JOINT OBLIGATIONS PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

#### **PRELIMINARY & CONSTRUCTION ENGINEERING**

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

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

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

### STATE OBLIGATIONS

#### PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or

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

### **FINANCE**

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

### **PROJECT ACTIVITIES**

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way

acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

### **RIGHT OF WAY**

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

### **AGENCY OBLIGATIONS**

#### **FINANCE**

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.

25. Agency's estimated share and advance deposit.

- a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
  - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.

29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
- a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
  - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
  - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).



34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

### **RAILROADS**

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

### **UTILITIES**

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

### **STANDARDS**

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.

40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
41. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.
42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications; and utilities.

### **GRADE CHANGE LIABILITY**

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

### **CONTRACTOR CLAIMS**

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

### **MAINTENANCE RESPONSIBILITIES**

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

### **WORKERS' COMPENSATION COVERAGE**

49. All employers, including Agency that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

### **LOBBYING RESTRICTIONS**

50. Agency certifies by signing the Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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