

INTERGOVERNMENTAL AGREEMENT
Sullivan's Gulch Trail Concept Plan: Eastbank Esplanade to the I-205 Corridor Trail
City of Portland

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 "City," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. City desires to enter into this Agreement in order to develop a project for the Metropolitan Transportation Improvement Program (MTIP). The MTIP schedules spending of federal transportation funds in coordination with significant state and local funds in the Portland metro region. It demonstrates how these projects relate to federal regulations regarding project eligibility, air quality impacts, environment justice and public involvement.
3. State, as the state agency responsible for pass-through Federal-Aid Surface Transportation Funds, is therefore a Party to this Agreement.
4. State and the Portland Urbanized Area Metropolitan Planning Organization (METRO), have entered into Intergovernmental Agreement Number 24862, ODOT/MPO/Transit Operator Agreement, and Intergovernmental Agreement Number 26835, State Fiscal Year 2011 Unified Planning Work Program (UPWP), wherein State and METRO cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. The project that is the subject of this Agreement is listed in the UPWP, as well as METRO's and State's respective roles and responsibilities. METRO is not a Party to this Agreement due to the existence of Agreement Number 24862 and the UPWP, and any METRO responsibilities mentioned in this Agreement are based on its obligations in these two agreements.

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

TERMS OF AGREEMENT

1. The following documents are attached hereto and by this reference made a part of this Agreement:
 - a. Exhibit A – Statement of Work
 - b. Exhibit B – Contractor Certification

City/State
Agreement No. 27222

c. Exhibit C – Federal Provisions

2. The purpose of this Agreement is to enable City to conduct concept planning work related to a potential Sullivan's Gulch Trail that would be a continuous shared use path connecting the East bank Esplanade (near the junction of Interstate 84 (I-84) and Interstate 5 (I-5)) to NE 122nd Avenue. This phase of the plan will be for the segment from the East bank Esplanade to the Interstate 205 (I-205) Corridor Trail/Gateway Regional Center in order to evaluate alignment, design, and cost, hereinafter referred to as "Project," as described in Exhibit A (scope, schedule and budget summary).
3. A personal services contractor, hereinafter referred to as "Consultant," has been selected by City, pursuant to the process established by ORS 279C.125 and Oregon Administrative Rule 137-048-0260, to perform part of the Project. It is the intent of the Parties that State will enter into a personal services contract directly with Consultant and City will manage and direct the Consultant's work in accordance with this Agreement.
4. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program (STP), Title 23, United States Code. The total Project cost is estimated at \$249,638, which is subject to change. STP Urban funds for this Project will be limited to \$224,000. The Project will be financed with STP funds at the maximum allowable federal participating amount, with City providing the match of \$25,638 and any non-participating costs, including all costs in excess of the available federal funds.
5. The term of this Agreement shall begin on the date all required signatures are obtained and the Federal Highway Administration (FHWA) approval has been given and shall terminate on completion of the Project and final payment, or two (2) calendar years following the date of the Notice to Proceed (NTP), whichever is sooner. This Agreement may be amended only upon mutual written consent of all Parties. No work shall begin on this Project until City receives written notice from State regarding federal approval for the use of Federal funds.
6. The federal funding for this Project is contingent upon approval by FHWA. Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at City's expense.
7. State considers City 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.

CITY OBLIGATIONS

1. City shall be responsible for the performance of its share of the work described in Exhibit A.
2. City has confirmed with METRO that sufficient funds from METRO's STP Urban allocation are available and authorized for expenditure to pay the costs of the Project. City certifies that sufficient funds are available and authorized to pay the required match to the STP Urban allocation. City is responsible for the required matching funds and any non-participating costs beyond the federal reimbursement.

3. Pursuant to the contract to be entered into between State and Consultant, City shall submit invoices and required supportive documentation regarding specific tasks and the progress on said tasks as shown in Exhibit A (i.e. monthly progress statement) for 100 percent of actual eligible costs incurred by Consultant on behalf of the Project directly to METRO's Project Manager for review and approval. City will also submit its own invoices and required supportive documentation regarding specific tasks and the progress on said tasks as shown in Exhibit A for 100 percent of actual eligible costs incurred by City on behalf of the Project directly to METRO's Project Manager for review and approval.
4. METRO's Project Manager for this Project is John Mermin, METRO, 600 NE Grand Avenue, Portland, OR 97232, 503-797-1747, john.mermin@oregonmetro.gov.
5. METRO, pursuant to Agreement Number 24862 and Agreement Number 26835 with State, will review and approve such invoices and thereafter present invoices and supportive documentation directly to State's Project Manager for review, approval, and payment. Invoices and required supportive documentation shall be presented for periods of not less than one-month duration, based on actual eligible expenses incurred. Invoices shall display 100 percent of total eligible expenses incurred during the period of the invoice, and identify any matching amounts if applicable. Invoices shall also display a categorical breakdown of costs, such as personnel costs (salary and benefits), other direct charges, and indirect charges that are appropriate for this Project. Documentation must be received by METRO before payment will be made, and must include copies of receipts for expenditures or system-generated accounting reports that document actual expenses incurred. City shall be responsible for all matching funds and all non-participating costs
 - a. Eligible project expenses are those deemed allowable by Office of Management and Budget (OMB) Circular A-87.
 - b. In the event the invoice is not approved, State shall request corrective action be taken and accomplished prior to approval of the invoice. The invoice shall be resubmitted with documentation supporting completion of the corrective action.
6. City shall keep accurate cost accounting records. The cost records and accounts pertaining to the work covered by this Agreement shall be retained by City for a period of six (6) years following final payment. Copies shall be made available upon request to State. State may request a copy of City's records pertaining to this Project at any time. When the actual total cost of the Project has been computed, City shall furnish State with an itemized statement of final costs.
7. If City determines that another personal services contractor(s) along with Consultant is necessary to accomplish any work described in Exhibit A, then City and State shall follow a similar process as described in Terms of Agreement, Paragraph 3, of this Agreement to select the contractor.
8. City 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,

City/State
Agreement No. 27222

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 City's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.

9. Any such indemnification shall also provide that neither the City's contractor and subcontractor nor any attorney engaged by City'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 anytime at its election assume its own defense and settlement in the event that it determines that City's contractor is prohibited from defending the State of Oregon, or that City'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 City's contractor if the State of Oregon elects to assume its own defense.
10. City agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, which hereby are incorporated by reference. Without limiting the generality of the foregoing, City expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
11. City shall perform the services under this Agreement as independent contractors and shall be exclusively responsible for all costs and expenses related to their employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
12. All employers, including City, 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. City shall ensure that Consultant complies with these requirements.
13. City 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 City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

14. City certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind City.
15. City's Project Manager for this Project is Paul Smith, Planning Manager, Portland Bureau of Transportation, 1120 SW 5th Avenue, Suite 800, Portland, OR 97204, (503) 823-7736, paul.smith@portlandoregon.gov, or assigned designee upon individual's absence. City shall notify State's Project Managers in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall be responsible for obtaining FHWA approval to obligate the STP Urban funds for this Project.
2. Upon approval by FHWA, State shall send a NTP to the City. NTP is a written notification indicating federal approval for the use of federal funds on a project.
3. State shall be responsible for the performance of its share of the work described in Exhibit A.
4. In consideration for the services performed, and upon receipt of monthly City reimbursement requests along with invoices and supporting documentation that were approved by METRO. State shall review for approval and make payment to Consultant or City for eligible costs. Said payment shall be within forty-five (45) days of receipt by State of the Project invoices and shall not exceed a maximum amount of \$224,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to City in accordance with the current State of Oregon Department of Administrative Services' rates.
5. State has no monetary obligation under this Agreement other than in its role as a "pass-through agency" to distribute STP Urban funds for the Project, as outlined in Exhibit A.
6. State's Project Manager for this Agreement is Bret Richards, Local Agency Liaison, 123 NW Flanders Street, Portland, OR 97209, (503) 731-8501, bret.n.richards@odot.state.or.us, or assigned designee upon individual's absence. State shall notify City's Project Managers in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of all Parties.
2. State may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by State, under any of the following conditions:
 - a. If City fails to provide services called for by this Agreement and as further outlined in Exhibit A within the time specified herein or any extension thereof.

City/State
Agreement No. 27222

- b. If City 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 State fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.
 - d. 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.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. As federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by City representative.
5. City as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for the organization's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon City's breach of any such conditions that requires State to return funds to the Federal Highway Administration, 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 City, 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.
6. 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 City 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.
7. With respect to a Third Party Claim for which the State is jointly liable with the City (or would be if joined in the Third Party Claim), the 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 the City in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the City 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 the State on the one hand and of the City on the other hand shall be determined by reference

City/State
Agreement No. 27222

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. The 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 the State had sole liability in the proceeding.

8. With respect to a Third Party Claim for which the City is jointly liable with the State (or would be if joined in the Third Party Claim), the City 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 the State in such proportion as is appropriate to reflect the relative fault of the City on the one hand and of the 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 the City on the one hand and of the 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. The City'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.
9. The Parties shall attempt in good faith to resolve any dispute arising out of this 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.
10. 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.
11. 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.

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 2010-2013 Statewide Transportation Improvement Program, Key #15587 that was approved by the Oregon Transportation Commission on December 16, 2010.

City/State
Agreement No. 27222

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 August 2, 2005, the Director, Deputy Director, Highways and Chief Engineer approved Subdelegation Order No. 5, in which the Director, Deputy Director, Highways and Chief Engineer delegate authority to the Region Managers to approve and sign intergovernmental agreements over \$75,000 up to a maximum of \$500,000 when the work is related to a project included in the Statewide Transportation Improvement Program (STIP) or in other system plans approved by the Oregon Transportation Commission or in a line item in the legislatively adopted biennial budget.

CITY OF PORTLAND, by and through its
elected officials

By _____
Mayor

Date _____

By _____
Auditor

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
City Legal Counsel

Date _____

City Contact:

Paul Smith, Planning Manager
Portland Bureau of Transportation
1120 SW 5th Avenue, Suite 800
(503) 823-7736
paul.smith@portlandoregon.gov

STATE OF OREGON, by and through its
Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

State Contact:

Bret Richards, Local Agency Liaison
ODOT – Region 1
123 NW Flanders Street
Portland, OR 97209
(503) 731-8501
bret.n.richards@odot.state.or.us

EXHIBIT A

For purposes of Exhibit A, references to Agency or ODOT shall mean State and references to Consultant or Contractor shall mean CH2M Hill, Inc.

STATEMENT of WORK (SOW) and DELIVERY SCHEDULE

for

Work Order Contract (WOC) #4 under Price Agreement (PA) # 27449

Sullivan's Gulch Trail Concept Plan

Agency's Project Manager ("APM")		Consultant's Project Manager ("PM")	
Name:	Bret Richards	Name:	Kristin Hull
Address:	ODOT 123 NW Flanders Street Portland, OR 97209	Address:	CH2M HILL, Inc. 2020 SW 4th Avenue, Suite 300 Portland, OR 97201
Phone:	(503) 731-8501	Phone:	503-736-4160
Fax:	(503) 731-8531	Fax:	503-736-2000
Email:	<u>bret.n.richards@odot.state.or.us</u>	Email:	Kristn.Hull@ch2m.com

PROJECT DESCRIPTION and OVERVIEW of SERVICES

Agency is contracting with Consultant for Services in connection with the following project (the "Project"):

Project Scope of Work

1. Background:

- a The City of Portland was awarded federal funds through the Joint Policy Advisory Committee on Transportation (JPACT) and Metro Council, for the purpose of conducting concept planning work related to a potential "Sullivan's Gulch Trail". The vision for the trail is a continuous shared use path connecting the East bank Esplanade (near the junction of I-84 and I-5) to NE 122nd Avenue running along the north side of I-84, eastside MAX light-rail and Union Pacific railroad tracks. This phase of the Concept Plan will be for the segment from the East bank Esplanade to the I-205 Corridor Trail/Gateway Regional Center in order to evaluate alignment, design and cost.
- b The Concept Plan Project will be staffed by the Portland Bureau of Transportation (PBOT) and Portland Parks and Recreation (PP&R) and will be developed with a Consultant. Between the East bank Esplanade and the I-205 Corridor Trail, the City's intent is that the

Sullivan's Gulch trail alignment, will be located along the northern property limit of the Union Pacific (UP) Railroad's Graham Line. The trail will serve as a direct and continuous route (separated from automobile traffic) facilitating bicycle and pedestrian mobility in-between the Central City and Gateway Regional Center. The study area will include the UP Railroad property and the adjoining properties along the north side. In addition, the plan will identify connections to the bicycle/pedestrian networks and on-street trail alignment alternatives as needed to address constraints along the railroad alignment.

- c Most of the area between the rail line and Union Pacific's (UP)'s north property line has a moderate to severe slope. Locating the trail along the northern limit of UP's property enables the City to maximize the distance from the active mainline railroad, utilize any adjacent city Right of Way (ROW) and more easily connect the trail to the street system and local neighborhoods. Because this is a physically challenging alignment, it is necessary to develop a terrain model at sufficient level to site an alignment and determine how the trail would be designed. It is envisioned that most of the trail will be developed at the top of the slope and that some segments will need to be supported by retaining walls. The terrain model is needed to determine where to place the trail to minimize the height of the retaining wall that will impact the cost of the trail construction.
- d The concept plan will document the needs, opportunities and constraints associated with establishing a regional trail in this corridor with numerous physical constraints. This information will be used to determine the preferred alignment and optimal trail design while minimizing property-acquisition costs, construction costs and adverse impacts to private property owners. The needs, opportunities and constraints analysis will also serve as a tool for outreach to residents and property owners that are impacted by the concept plan.
- e Consistent with best practices design of rails-with-trails, the trail would be sited to minimize any impacts on the active rail line help assure the safety of trail users. The tradeoff of maximizing the distance of the trail from the UP Graham Line is the potential impacts on other properties to the north. The Concept Plan will be developed in close coordination with the Union Pacific Railroad and abutting property owners.
- f The Concept Plan will also include the consideration of how the trail will connect to existing neighborhoods via the City's street, sidewalk and bicycle facility network. As well as how it will interface with the twenty-four (24) roadway structures the UP's Graham Line passes under.
- g In this potential location, the trail would also traverse property associated with I-5 and I-205 owned by the Oregon Department of Transportation (ODOT). Close coordination with ODOT will also be integral to the Trail Concept Plan.
- h Trail alternatives adjacent to and north of UP's property could affect private businesses and other land uses. Coordination with private property owners is also integral to understanding the existing and planned uses, such as site access, operations and storage, potentially affected by trail ROW acquisition. The Concept Plan will consider these impacts as well as

City/State
Agreement No. 27222

concerns of the community and property owners in determining alternative trail alignments and pathway designs.

2. Project Purpose:

The purpose of the Project is to conduct a technical evaluation of the feasibility to locate a shared-use bicycle/pedestrian trail along the northern property limit of the Union Pacific (UP) Railroad's Graham Line, and produce a conceptual plan for the facility. The Concept Plan will determine the trail alignment and basic design and provide cost estimates.

3. Deliverables Overview

- a Consultant shall provide City with draft deliverables at least ten (10) days prior to any Project Advisory Committee (PAC) or public meeting at which they will be discussed.
- b City will be responsible for meeting logistics, including agendas, summaries, locations and scheduling.
- c One member of the consultant team shall attend five (5) PAC meetings to present materials and information in Consultant deliverables.
- d Two (2) members of the consultant team (Project Manager and Engineering Lead) shall attend two (2) public information meetings to present materials and information in Consultant deliverables.
- e Products presented at PAC and public meetings are considered drafts, and must be edited to incorporate meeting input to be finalized. Budget assumes one (1) round of revisions to each technical memo, map or illustration.
- f The City will prepare any public/PAC display or presentation materials based on Consultant products.

STANDARDS and GENERAL REQUIREMENTS

The standards and general requirements applicable to this WOC are stated in the parent PA/Agreement to Agree (ATA). In addition to those stated in the PA, the following shall apply to this WOC:

1. General Requirements

- a The APM (or such other individual identified in specific tasks or as designated in writing to Consultant) is the primary contact on behalf of Agency for this Project.
- b To the extent possible, all transmittals from Consultant to Agency must include as applicable the Contract#, ATA/PA#, WOC#, Project name and the Project key number.
- c Consultant shall represent Project and Agency in an appropriate and professional manner in public.

REVIEW, COMMENT and SCHEDULE OVERVIEW

- a Consultant shall submit all deliverables to APM or designee unless otherwise noted in specific tasks.
- b Consultant shall make revisions to address Agency review comments and submit revised deliverable(s) to APM within ten (10) business days of receipt of Agency review

City/State
Agreement No. 27222

comments, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by Agency.

FORMAT REQUIREMENTS

- a Consultant shall submit draft deliverables in electronic format via email (and hard copy if requested).
- b Consultant shall also submit all graphic files accompanying reports separately in .jpg or .tif formats unless specified differently by Agency.
- c Each draft and final text-based or spreadsheet-based deliverable shall be provided in MS Office file formats (i.e., MS Word, MS Excel, etc.) and must be fully compatible with version used by Agency.
- d Additional format requirements may be listed with specific tasks/deliverables throughout the SOW or in the PA/ATA/Contract.

TASKS, DELIVERABLES and SCHEDULE

Task 1: Public Outreach

1. Task Objectives:

- a Identify and develop a database of key project stakeholders, interest groups and community based organizations including but not limited to adjacent neighborhood and business associations, impacted property owners, community based organizations, non geographic community groups, residential and business tenants.
- b Identify areas of community and stakeholder interest, support, and concerns.
- c Ensure that technical considerations are adequately reflected in the concept plan.
- d Engage community groups, impacted private property owners and the general public in developing the concept plan to maximize benefits and minimize negative impacts.

2. Subtasks

- a City will develop the Public Involvement Plan (PI Plan) which will include roles and responsibilities of participating public agencies, stakeholders, community, business and neighborhood associations (all identified stakeholder groups). The PI Plan will include strategies and outcomes for engaging stakeholder involvement in the Project. Elements of the plan shall include, but are not limited to:
 - i. Recruiting PAC members including representatives from ODOT, UP Railroad, Metro, City bureaus, the all-volunteer Sullivan's Gulch Trail Committee, neighborhood associations, community based organizations and other stakeholders.
 - ii. Compiling a list with contact information of property owners and business tenants adjacent to the proposed trail .
 - iii. Contacting identified project stakeholders, interest groups and community based organizations over the course of the Project to provide updates on the Project and seek input.
 - iv. Developing the information, materials and strategies for distributing information, soliciting input and recruiting participation. This will include emails, websites, mailers, newsletters, etc.
 - v. Coordinating with UP Railroad to identify concerns of the trail impacts on railroad operations, future expansion plans for the Graham Line, and the potential for

- acquisition of property or an easement for the trail. City will document concerns identified in discussions with the railroad.
- vi. Organizing and facilitating an initial PAC meeting to discuss the Project and its planning process. Subsequent PAC meetings will occur as described in Tasks 2 through 5.
 - vii. Facilitating and producing summaries of all PAC meetings
- b. Consultant shall conduct stakeholder interviews with up to twenty (20) private property owners or tenants where a significant impact to the use of their property is anticipated. Interviews are to identify and clarify issues, such as circulation needs for trucks at a business, to determine how a new trail may potentially impact properties, uses and occupants, and to present project work in Tasks 3 and 4. The City Project Manager, in consultation with the Consultant Project Manager, shall determine interviewees and when the interviews will be conducted. Interviews may take place in person or by phone. It is anticipated that interviews will average ½ hour each. Consultant shall document the results of stakeholder interviews. City and Consultant shall work together to develop the interview questions. The City shall provide contact information for property owners.
 - c. Consultant will prepare materials and participate in five (5) PAC meetings as described in Tasks 2 –5.
 - d. Consultant will participate in a two (2) hour work session to define a negotiation strategy for engaging UP Railroad in the project.

3. City Deliverables:

- a. Roster of PAC membership.
- b. List of adjacent property owners and business tenants.
- c. Project website.
- d. Summary of initial PAC meetings.
- e. Documentation of UP Railroad issues and concerns on trail alignment.
- f. Public Involvement Plan.

4. Consultant Deliverables:

Up to twenty (20) one (1) page summaries of property owner meetings which will identify areas of community and stakeholder interest, support, and concerns.

Task 2: Existing Conditions

1. Task Objectives:

- a. Document existing conditions and data to be used in later tasks to determine trail feasibility and preferred alignments and designs and to minimize costs, pathway grades and retaining wall heights
- b. Develop a base map for the Project and a terrain model using 2007 Light Detection and Ranging (LiDar) data (processed to 1-foot resolution Digital Elevation Model) along the north side of UP's Graham Line from the Willamette River to Gateway Regional Center at a level appropriate for the requirements of the Trail Concept Plan
- c. Identify factors such as roadway overpass abutments and utilities along the trail corridor that may present constraints on trail alignment and design

City/State
Agreement No. 27222

- d Document and describe trail issues such as the potential for noise and crime that may concern adjacent stakeholders
- e Document general costs of potential trail treatments, such as construction of cut/fill structures and acquisition of private property, to clarify trade-offs that must be considered when determining a trail alignment

2. Subtasks

- a City will produce the base map for the study area, based on aerial photos, that depicts transportation networks (street grid, existing/planned bicycle and pedestrian networks, etc.), property lines, building footprints, railroads, Natural Resources Conservation Service (NRCS) soils, city-owned utilities (e.g. water, wastewater, stormwater), zoning and existing land use. The base map must be developed using ESRI ArcGIS software.
- b Consultant shall create a 3-dimensional digital terrain model for the study area to be used in Tasks 3 through 5. Terrain model must be based on LiDar imagery in Bentley InRoads format that will be provided by the City.
- c Consultant shall prepare a base map using Bentley Microstation from data provided from Task 2 Subtask 2, paragraph a and supplement the base map prepared by the City with the location of the overpass abutments and their supporting foundations where necessary to determine the feasibility of underpass trail alignment at structures. City will supply the consultant with bridge plans for structures on the City of Portland Bridge Inventory and available bridge plans for structures not owned by the City of Portland. Consultant will not verify as-built conditions in the field. Research or field investigation of any bridges or other structures for which plans are not available will be considered extra work and not included in this scope of work. City will produce a Technical Memorandum (TM) on trail nuisances summarizing existing research concerning trail impacts on crime, noise, trespassing, and other neighborhood nuisances, and describe common mitigation measures.
- d Consultant shall obtain readily available Geographic Information System (GIS) data on private utilities (e.g. power, telecommunications, etc) that pose a concern or obstacle to trail alignment or design and incorporate this information on the Microstation base map as Consultant determines necessary to depict impacts to be considered in subsequent tasks.
- e Consultant shall prepare a TM documenting general ROW and construction costs (e.g. typical cross-section on flat land vs. on cut/fill structure) to inform trade-offs to be considered determining trail alignment in Task 3. City will provide Consultant with general ROW costs (e.g. per square foot) accounting for varying conditions (e.g. UP Railroad versus private property, impacted buildings, operations and land uses) along the corridor for use in the TM.
- f City will facilitate a PAC meeting to review Task 2 products and gain input.

3. City Deliverables:

- a Base map.
- b Trail nuisances TM.
- c PAC meeting summary.

4. Consultant Deliverables:

- a 3-dimensional digital terrain model in InRoads DTM format.

- b Revised basemap in Microstation XM format incorporating abutments and GIS locations of utilities.
- c Draft and final TM on general costs and acquisition methods.

Task 3: Needs, Opportunities and Constraints

1. Task Objectives:

- a Document the needs, opportunities and constraints associated with establishing a regional trail in this significantly constrained corridor.
- b Evaluate opportunities and constraints in designating the optimal trail alignment and designs while minimizing placement on UP ROW, property-acquisition costs, construction costs and adverse impacts to private property owners.
- c Develop typical sections for both constrained and wide ROW segments.

2. Subtasks

- a Consultant shall produce a Needs, Opportunities and Constraints report that documents the following:
 - i. Proposes guiding principles and criteria to address opportunities and constraints, which would be applied in creating a recommended trail alignment, cross-sections and access spacing. Principles will be based on those included in the City's bicycle master plan and will also address "user quality" along the preferred alignment to determine when it makes sense to identify an alternative alignment to avoid severely constrained points, user conflicts, freeway noise or other undesirable conditions.
 - ii. Describes opportunities and constraints within the study area, such as pinch points, that should be considered in developing the recommended alignment and conceptual design. Description of opportunities and constraints must be provided using text and/or map graphics that in the consultant's professional opinion convey the information most clearly. This review will include a literature search for geotechnical conditions, vacant or available parcel identification, rail crossing locations, and ROW width at various locations.
 - iii. Consultant shall conduct a one (1) day site visit with four (4) members of the team to inform the needs, opportunities and constraints memo.
 - iv. To address the identified constraints, the Consultant will develop a "toolkit" that identifies recommended methods of addressing the constraints. Pros and cons of each recommended treatment will be identified. This will provide a general framework for making design decisions and selecting from different alignment options. The toolkit will address issues such as pinch points, property impacts, relative cost, trail user safety, access, roadway crossings and other relevant site conditions to aid the team in making decisions about alignment options. The toolkit will be provided as a memo that includes illustrations, diagrams, photos and text as appropriate to convey the ideas for up to twelve (12) typical constraint conditions.
- b Consultant shall prepare drawings of typical cross-section concepts consisting of two (2) 'typical sections' which illustrate and dimension trail elements including the trail paved width, railing/barriers, retaining walls, and earthwork slopes. The first typical section will provide a minimal trail width to address constrained locations. The second typical section will provide a wider path design to be used where conditions permit. Non-typical cross-

City/State
Agreement No. 27222

sections (such as separate bicycle and pedestrian paths) will be considered in Task 4. The actual dimensions and designs reflected in the typical sections must be determined in consultation with city and the PAC and must consider *Trail Design Guidelines for Portland's Park System* (PP&R, May 2009) and the *AASHTO Guide for the Development of Bicycle Facilities* (1999).

- c The Consultant shall conduct a ½ day work session to review mapped needs, opportunities and constraints and typical sections with City and identify other issues to address in the technical memorandum. Six (6) members of the consultant team shall attend this work session.
- d City will facilitate a PAC meeting to review Task 3 products and gain input. One (1) member of the consultant team will attend PAC meeting to present the opportunities and constraints memo and cross-sections.
- e City will conduct a public information meeting to share task products and receive comments. Two (2) member of the consultant team will attend the public information meeting.

3. City Deliverables:

- a PAC and public meeting summaries
- b Summary of public input and outcomes of the public information meeting

4. Consultant Deliverables:

- a Draft and final Needs, Opportunities and Constraints report
- b Agenda and summary of work session with City to review preliminary needs, opportunities and constraints map and typical cross sections.
- c Typical cross-section concepts

5. Assumptions:

City will provide all materials for public information meeting and PAC meeting

Task 4: Proposed Trail Alignments, Cross-Sections and Access Points

1. Task Objectives:

- a Develop trail alignments and a plan-view design within the defined corridor using the base map, terrain model, needs, opportunities and constraints analysis and other data collected in Tasks 2 and 3.
- b Identify where trail structures, such as retaining walls and other structures may be needed.
- c Describe the structures to allow for the development of planning-level cost estimates.
- d Develop a range of roadway crossing scenarios to address various conditions along the alignment where the trail intersects a road.

2. Subtasks

- a Consultant shall develop a plan for a proposed trail alignment for the Project extent. The trail alignment must be depicted as a scalable overlay on the base map, and must show recommended cross-section dimensions and access points for the surrounding community. For areas along the corridor where the trail is not an option, due to limited ROW, conflicts with active rail lines, extreme grades, conflicts with existing structures (vertical or

City/State
Agreement No. 27222

horizontal) or other factors, the proposed alignment must have an alternate route. The alternate route may include using the city street system and appropriate design treatment, for bicycle boulevards and sidewalks to accommodate trail users. The trail alignment must identify trail segments along the corridor, based on technical evaluation and location of access points, to allow for incremental construction of the facility. The trail alignment model must clarify the location and degree of slopes, and the size of engineered structures such as retaining walls. All data must be provided in Bentley Microstation format. To support this work, the consultant shall spend up to one (1) full day in the field.

- b Consultant shall conduct a work session with City to review proposed trail alignments and proposed roadway crossing scenarios and work through changes. The work session shall be ½ day and held at CH2M HILL's Portland office. The outcome of the work session will be clear guidance from the City about an alignment to share with the PAC. Up to six (6) members of the consultant team shall attend work session.
- c Consultant shall develop up to four (4) trail-roadways crossing scenarios, such as construction under an overpass, or bringing the trail to street grade, to address the range of crossing conditions along the trail and to provide enhanced trail access. Trail-roadway crossing scenarios must be shown in the plan and elevation, and may be depicted using the aerial base map to clarify how the crossing scenarios will fit with the surrounding context.
- d Consultant shall create visualizations of the future trail by combining GIS features, sketches and photo simulations with the terrain model for three (3) locations, selected in consultation with the City, based upon trail alignment recommendations. A total of three (3) static visualizations at three (3) locations will be produced. The locations will be determined as part of Task 4, paragraph a. Visualizations will not be illustrative and of photo quality. This task assumes one (1) round of revisions to the visualizations. The Consultant shall provide the visualizations in an electronic raster image format (jpg and/or tif) and in the native Sketch-Up Format (skp).
- e Consultant shall write a TM for the proposed Trail Alignment, describing the proposed alignment, access points, trail-roadway crossing plans and segments, and discussing how each best responds to opportunities and constraints, as well as how the proposed alignment mitigates or minimizes negative impacts to adjacent property.
- f City will facilitate a PAC meeting to review Task 4 recommendations and gather input.
- g City will conduct a public information meeting to share task products and receive comments.
- h Two (2) members of the consultant team shall attend the public information meeting.

3. City Deliverables:

PAC and public meeting summaries.

4. Consultant Deliverables:

- a Proposed trail alignment illustrated on the base map (including cross-section dimensions and access points) and on the terrain model.
- b Trail-roadway crossing scenarios.
- c Agenda and summary of ½ day work session with City to brainstorm alignments and roadway crossing scenarios.
- d Draft and final proposed trail alignment TM.
- e Draft and final trail visualizations.

Task 5: Plan Preparation

1. Task Objectives:

- a Refine the proposed trail alignment into a recommended trail alignment in response to public input.
- b Document trail ROW impacts.
- c Generate cost estimates.
- d Generate the draft and final *Sullivan's Gulch Trail Concept Plan*.

2. Subtasks

- a Consultant shall, based on feedback from the PAC, public meeting and stakeholder interviews, refine the proposed trail alignment graphics and text to adjust the trail alignment and/or design in response to comments to produce a recommended trail alignment. Recommended trail alignment must prioritize segments for construction considering public and City comments. Consultant shall add a GIS layer to identify and calculate parcel-specific ROW needs for the recommended trail alignment.
- b Consultant shall produce a TM to document impacts to private property by the recommended trail alignment and design, with a particular emphasis on significantly impacted properties.
- c The Consultant will prepare a planning-level ROW acquisition (based on standard costs provided by City), and a project development and construction cost estimate for the recommendations from Task 4. The cost estimate must be developed on a segment basis, must include the cost of structures required for the trail (e.g. retaining walls), and must document the underlying unit costs and estimate assumptions.
- d The Consultant will prepare the draft and final *Sullivan's Gulch Trail Concept Plan* and incorporate time for review by the City, the PAC and the public. The Consultant will participate in two (2) rounds of review and revision. The Concept Plan will be provided electronically to the City. The Sullivan's Gulch Trail Concept Plan will be an executive summary that will summarize the work completed and include the following materials produced in earlier tasks as appendices:
 - i. Existing conditions summary.
 - ii. Terrain model findings and graphics generated, including maps, 3-D model graphics and visualizations of the proposed trail alignments.
 - iii. Summary of the plan process including outreach to property owners, stakeholders and the general public (summary text to be provided by City).
 - iv. Needs, opportunities, constraints analysis and findings.
 - v. Typical cross-section concepts.
 - vi. Recommended trail alignments, cross-sections and access points.
 - vii. Trail segment implementation priorities.
 - viii. Private property impacts analysis.
 - ix. Trail cost estimates.
- e City will produce a policy TM documenting steps for incorporating the recommendations of the *Sullivan's Gulch Trail Concept Plan* into the City's Transportation System Plan and the Comprehensive Plan Map.
- f City will facilitate a PAC meeting to review Task 5 products and gain input.

3. City Deliverables:

- a PAC meeting summary.
- b Policy TM.

4. Consultant Deliverables:

- a Recommended trail alignment using Bentley Microstation and InRoads format.
- b Property impact TM.
- c Cost estimates (in MS excel format).
- d Sullivan's Gulch Trail Concept Plan.
- e Provide ArcGIS files of the proposed trail alignment.

Task 6: Project Management and Coordination Meetings

1. Task Objective:

Ensure smooth project coordination between the City and Consultant.

2. Subtasks

- a City will coordinate the Project, facilitate project team meetings, track City and Consultant deliverables, and act as liaison between the Consultant, stakeholders and public agencies.
- b The City and the Consultant shall meet at the start of each task (Tasks 1 through 5), plus up to three (3) additional occasions as required by City.

3. City Deliverables:

Process project invoices and supportive documentation as outlined in Intergovernmental Agreement No. 27222.

4. Consultant Deliverables:

- a Complete monthly progress reports.
- b Participation by three (3) members of the consultant team in up to eight (8), two (2) hour team meetings held at CH2M HILL.

Consultant deliverable schedule

Task 1. Public outreach	
Up to twenty (20) one page summaries of property owner meetings.	Due one (1) week after stakeholder meetings.
Task 2. Existing Conditions	
3-dimensional digital terrain model in InRoads DTM format.	Due one (1) month after receipt of data from the City.
Revised basemap in Microstation XM format incorporating abutments and GIS locations of utilities.	Due one (1) month after receipt of data from the city.
Draft and final TM on general costs and acquisition methods.	Due two (2) months after receipt of data from the city.
Task 3. Needs, opportunities and constraints	
Draft and final Needs, Opportunities and Constraints report.	Due five (5) months after NTP.
Agenda and summary of ½ day work session with City to review preliminary needs, opportunities and constraints map and typical cross sections.	Agenda is due three (3) days before meeting; summary is due five (5) days after meeting.
Draft and final typical cross-section concepts.	Due five (5) months after NTP.
Task 4: Proposed Trail Alignments, Cross-Sections and Access Points	
Proposed trail alignment illustrated on the base map (including cross-section dimensions and access points) and on the terrain model.	Due eight (8) months after NTP.
Trail-roadway crossing scenarios.	Due eight (8) months after NTP.
Agenda and summary of ½ day work session with City to brainstorm alignments and roadway crossing scenarios.	Agenda is due three (3) days before meeting; summary is due five (5) days after meeting.
Draft and final proposed trail alignment TM.	Agenda is due three (3) days before meeting; summary is due five (5) days after meeting.
Draft and final trail visualizations.	Agenda is due three (3) days before meeting; summary is due five (5) days after meeting.

City/State
Agreement No. 27222

<u>Task 5: Plan Preparation</u>	
Recommended trail alignment using Bentley Microstation and InRoads format.	Due nine (9) months after NTP.
Property impact TM.	Due nine (9) months after NTP.
Cost estimates (in excel format).	Due nine (9) months after NTP.
Sullivan's Gulch Trail Concept Plan.	Due ten (10) months after NTP.
Provide ArcGIS files of the proposed trail alignment.	Due ten (10) months after NTP.
<u>Task 6: Invoice</u>	
Up to twelve (12) monthly progress reports.	Due ten (10) days after month end.
Participation by three members of the consultant team in up to eight (8), two (2) hour team meetings held at CH2M HILL.	As directed by City project manager.

Acceptance of Deliverables

1. If Agency determines that any deliverables are not acceptable and that any deficiencies are the responsibility of Consultant, Agency will prepare a detailed written description of any deficiencies and an associated time frame for correction, and deliver such notice to Consultant. Consultant shall correct any deficiencies at no cost to Agency. If the corrective work causes any Project delays, Consultant will submit a plan for regaining the Project schedule for remaining work under the WOC, unless otherwise allowed by Agency.
2. If the identified deficiencies have not been corrected within the specified timeline, Agency may, in accordance with Section 10 of the Price Agreement: (i) terminate this WOC without payment or any further obligation or liability of any kind; or (ii) require Consultant to continue to correct the deficiencies, reserving this same right to terminate at any time.

Project Responsibilities.

1. Consultant acknowledges that Agency may have separate contract(s) with other entities (i.e., contractors, consultants or governmental agencies) involved with the Project. Consultant shall support Agency's efforts to create and maintain a cooperative working relationship between and

City/State
Agreement No. 27222

among other entities involved in the Project, and their respective representatives, to further the interests of Agency to result in the Project being successfully completed on time and within budget.

2. This SOW describes the responsibilities of all entities involved in this Project. Consultant shall be responsible only for those responsibilities and deliverables identified as being assigned to Consultant (or its sub-consultants) in this WOC and the SOW. All work assigned to other entities, other than sub-consultants, is not subject to this WOC, but shall be the subject of separate Intergovernmental Agreements or contracts which will contain the obligations of those entities. Any tasks or deliverables assigned to a sub-consultant shall be construed as being the responsibility of Consultant.
3. Any Consultant tasks or deliverables which are contingent upon receiving information, resources, assistance, or cooperation in any way from another entity (other than subconsultants) as described in this SOW shall be subject to the following guidelines:
 - a At the first indication of non-cooperation, Consultant shall provide written notice to Agency WOC Administrator of the specific acts or inaction indicating non-cooperation and of any deliverables that may be delayed due to such lack of cooperation by other entities referenced in the SOW.
 - b Agency WOC Administrator shall contact the non-cooperative entity/s to discuss the matter and attempt to correct the problem and expedite items determined to be delaying Consultant/Project.
4. If Consultant has followed the notification process described in Project Responsibilities, section 3, paragraph a, and delinquency or delay of any deliverable is found to be a result of the failure of other referenced entities to provide information, resources, assistance, or cooperation, as described in the SOW, Consultant will not be found in breach or default with respect to delinquencies beyond any reasonable control of Consultant; nor shall Consultant be assessed or liable for any damages arising as a result of such delinquencies. Neither shall Agency be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. Agency WOC Administrator will negotiate with Consultant in the best interest of the state, and may revise the delivery schedule to allow for delinquencies beyond any reasonable control of Consultant. Revised delivery dates beyond the expiration date require an amendment to the WOC.

COMPENSATION

1. The method(s) of compensation and payment option(s) selected below are incorporated from Exhibit B to the PA. For additional detail and requirements regarding compensation methods, payment options, or Agency's right to withhold retainage, see PA - Exhibit B, Compensation. No compensation is provided to Consultant for negotiations, preparing or revising cost estimate for Services, or negotiating contracts with subcontractors. Note: Some tasks (e.g., Project Management) will be ongoing throughout the project; however, all tasks are only budgeted for the level of effort applicable to the current phase of the Project.

City/State
Agreement No. 27222

184544

Non-Contingency Tasks

The method(s) of compensation for non-contingency tasks in this WOC is:

☒ Time and Materials with Not-To-Exceed ("T&M")

Payment Options

The payment option for the Services in the attached SOW is:

☒ **Monthly Progress Payments for acceptable and verifiable progress (For costs on CPFF or T&M);**

Total WOC NTE Amount

	Compensation Summary Table	Amount
1. CPFF NTE Amount (not including Fixed-Fee)	NTE Amount for allowable costs of non-contingency Services in this WOC	N/A
2. Fixed-Fee Amount	Total of Fixed-Fee amount(s) (for CPFF only)	N/A
3. Fixed Price Amount	Total of Fixed Price amount(s)	N/A
4. T&M NTE Amount	Total for any non-contingency Services	\$149,984
5. Price Per Unit NTE Amount	Total NTE for Price Per Unit Costs	N/A
6.	Total Non-Contingency Amount:	\$149,984
7. above:	Total for Contingency Tasks (if any) per Section F	\$0
TOTAL NTE (line 6 plus line 7) This amount includes all direct and indirect costs, profit, Fixed Fee amount (if any) and contingency task costs (if any).		\$149,984

INVOICES

Invoices must be in conformance with PA requirements. Consultant shall submit invoices electronically via email to APM and to OPOContractInvoices@odot.state.or.us.

For purposes of Exhibits B and C, references to Department shall mean STATE, references to Contractor shall mean City, and references to Contract shall mean Agreement.

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

DEPARTMENT OFFICIAL CERTIFICATION

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

Exhibit C
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS- PRIMARY COVERED TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-2710) to which this proposal is being submitted for

City/State
Agreement No. 27222

assistance in obtaining a copy of those regulations.

6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction

knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction",

"participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a

prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul

this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of

materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:

- a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state

that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to

protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 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, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such 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 Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. 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.
2. 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 agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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 Section 1352, Title 31, U. S. Code. 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.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING
DEPARTMENT'S DBE PROGRAM
REQUIREMENT CONTACT OFFICE OF
CIVIL RIGHTS AT (503)986-4354.