

Exhibit A

Oregon Department of Land Conservation and Development 635 Capitol Street N.E. Salem, Oregon 97301 2011-2013 Grant Contract		Date January 27, 2012
		Type of Grant Technical Assistance - Urban
Grantee Name City of Portland Bureau of Planning and Sustainability		Grant No. PR-U-13-167
Street Address 1900 S.W. 4th Avenue Suite 7100 Portland, Oregon 97201		DLCD Share of Cost \$100,000.00
State General Fund X	Closing Date May 30, 2013	Grantee Share of Cost (if applicable) Not Required
Last Legal Date to Amend Grant per Standard Condition 16.		Total Cost \$100,000.00
Project Title A Healthier, Connected and More Affordable City – Integrating Urban Form and Mobility		
Grantee Representative Al Burns, Senior City Planner Phone: 503.823.7832 Fax: 503.823.7800 a.burns@portlandoregon.gov		DLCD Representative Anne Debbaut, DLCD Grant Manager Phone: 503.804.0902 anne.debbaut@state.or.us

This State of Oregon grant Contract herein referred to as **Contract**, and is by and between the **Department of Land Conservation and Development**, herein referred to as **DLCD**, and the **City of Portland** herein referred to as **Grantee**.

This Contract, approved by the Director of the Department of Land Conservation and Development, acting on behalf of the Land Conservation and Development Commission, is issued in duplicate and constitutes an obligation of funds in return for the work described herein. By signing the two documents, Grantee agrees to comply with the grant provisions checked below and attached. **Upon acceptance by Grantee, the two signed complete documents shall be returned to DLCD.**

Grantee shall sign both copies of this Contract and return both signed copies to DLCD within thirty (30) days of the date at the top of this page. If not signed and returned without modification by Grantee within thirty (30) days of receipt, the DLCD Grant Program Manager may unilaterally terminate the grant award. Upon receipt of the signed Contract the DLCD Grant Program Manager shall sign and return one copy to Grantee.

The Effective Date of this Contract is the latest date on which all parties have signed this Contract and all necessary approvals have been obtained by the "Effective Date".

Funds provided under this Contract can only be used for **expenditures incurred on or after the Effective Date and on or before the Closing Date specified above.**

This grant may be amended according to the policies and procedures of DLCD, and with the Contract of all parties to the Contract, but the Closing Date cannot go beyond **May 30, 2013**.

This Contract consists of the required signatures and attachments listed and checked below. The attachments are listed in descending order of precedence. In the case of any conflict among the documents, the document with the higher precedence shall control.

Components of the Contract and required signatures are below.

- ☒ Department of Land Conservation and Development Special Award Conditions
- ☒ Department of Land Conservation and Development Standard Award Conditions
- ☒ Attachment A: Grantee Grant Application and Narrative
- ☒ Attachment B: Contact Names and Addresses identified in Attachment B
- ☒ Attachment C: Request for Reimbursement Form and Instructions
- ☒ Attachment D: DLCD Form1 Periodic Review Submittal Form
- ☒ Attachment E: Intergovernmental/Regional Solutions Team (IGRST) Names
- ☒ Attachment F: Periodic Review Assistance Team (PRAT) Names and Addresses

Print Name of Authorized Official For the Grantee	Title	Date
Signature of Authorized Official For the Grantee		
Print Name of DLCD Grant Program Manager Patty Snow	Community Services Manager	Date
Signature of DLCD Grant Program Manager		

APPROVED AS TO FORM

James H. Van Dyke **6/1**
CITY ATTORNEY

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT SPECIAL AWARD CONDITIONS

Subject to any applicable debt limitation set forth in Article XI, Section 10, of the Oregon Constitution, by city charter or otherwise, and contingent upon funds being appropriated by the Legislative Assembly and sufficient allotment authority therefore, Grantee agrees to the provisions below.

1. *Grantee agrees* that this grant, number **PR-U-13-167**, to **City of Portland** supports the work described in the Grantee's grant application (the "Project" or the "Work"), which is incorporated into this Contract as **Attachment A-Grantee Grant Application and Narrative**. Where the terms of the other Contract documents and Attachment A differ, Attachment A will be given the priority set forth above and these special award conditions shall prevail.
2. *Grantee agrees* that all reports, studies, and other documents produced under this scope of work must indicate on the cover or the title page an acknowledgement of the financial assistance provided by DLCD and Bear the following legend: "This project is funded by Oregon general fund dollars through the Department of Land Conservation and Development. The contents of this document do not necessarily reflect the views or policies of the State of Oregon."
3. *Grantee agrees* to identify the location of the originals of any Product(s) or "Work Product(s)", if the copy is submitted to DLCD or if the "Product(s)" or "Work Products" is one-of-a-kind document.
4. *Grantee agrees* to first obtain DLCD approval of any chosen facilitator (consultant), before locally approving a facilitator (consultant), and signing a Local Agreement or Local Contract to perform all, or a portion of the Project.
5. *Grantee agrees* to provide a legible copy of the signed Local Agreement or Local Contract between the jurisdiction and the facilitator, no later than 3 business days after both parties have signed the Local Agreement or Local Contract.
6. *Grantee agrees to complete the following by March 27, 2012:*
 - a. Identify by name, address, telephone, and email address, those person(s) who will be performing the Project Work and which of tasks listed under the Scope of Work for this Contract ("Work Tasks") they will work on.
 - b. List each step that will be taken to complete each Work Task(s) and any Product(s) or Work Product(s) delivered in connection with the Work Task(s).
 - c. Provide a specific and descriptive explanation of each "Product" or "Work Product" to be delivered under a Work Task.
7. *Grantee agrees* in performing the Project under this Contract, to ensure consistent, coordinated use of population, employment, housing, and land needs projections associated with the following activities:

The periodic review work programs and related tasks,
The transportation system plans being prepared pursuant to OAR 660-012,
8. *Grantee agrees* to make every effort to adopt the Final Product(s) (i.e., ordinances, maps, data bases, supporting documents, and photographs) by ordinance as scheduled in the approved Periodic Review Work Program.

9. *Grantee agrees* if it is determined necessary by the DLCD Grant Manager to submit a request to DLCD to revised the Periodic Review Work Program if there is an amendment to the activities and products of this Contract that are different from their approved Periodic Review Work Program.
10. *Grantee agrees* that any Periodic Review Contract Final Products will be Hearings Ready Draft Products and identified with a Work Task number and submitted under Attachment F- DLCD Form 1 Periodic Review Submittal Form per ORS 197.633 and OAR 660 Division 025.
11. *Grantee agrees* that any Final Draft Product(s) (i.e., ordinances, maps, websites, databases, supporting documents, and photographs) not adopted in accord with special condition 8 above and shall be hearings ready drafts accepted by the governing body and shall be accompanied by a report in detailing why the Product(s) were not adopted and a time frame for the future adoption of the Product(s).
12. *Grantee agrees* to coordinate and provide notice to DLCD, Metro, and any other agencies, and organizations listed in Attachment A of public meeting(s), workshop(s), work session(s), and/or hearing(s) to develop, review or approve products prepared under this Contract.
13. *Grantee agrees* in consultation with the DLCD Grant Manager provide timely review of all draft copies of Work Product(s), and non-related Draft Work Product(s) to DLCD, affected agencies and organizations for review and comment.
14. *Grantee agrees* to submit a written report at the request of the DLCD Grant Manager at any time outside of the payment schedule in addition to the reports submitted with Attachment C.
15. *Grantee agrees* that DLCD will provide no more than **one interim payment and a final payment** before the Closing Date, and agrees that payments will be made only upon submittal of qualifying Product(s) and progress report(s) in accordance with the terms of Attachment C to this Contract. The report(s) must describe the progress to date on each Work Task(s) or Product(s) undertaken during the billing period. Other written or verbal progress reports will be provided upon reasonable request by the DLCD Grant Manager.
16. *Grantee agrees* that the total reimbursement request for Work Task(s) or Product(s) 1 shall not exceed **\$30,000.00**, and for Work Task(s) or Product(s) **2 and 3** shall not exceed **\$70,000.00**. The total reimbursement of all Work Task(s) or Product(s) shall not exceed **\$100,000.00**.
17. *Grantee agrees* and understands that payments under this Contract will be reduced if Work Task(s) or Product(s) scheduled to be completed are not completed by its governing body by the timeline provided in the Work Program and Timeline set Forth on the Scope of Work. The total grant payments under this Contract, will not be reduced under this paragraph by no more than 20% rounded up to the near dollar amount which equals **\$20,000.00**. Grantee further understands and agrees that DLCD's payment obligations under this Contract are conditioned upon DLCD's receiving funding, appropriations, limitations, allotments or other expenditures authority sufficient to allow DLCD in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract.

GIS geographic information system (GIS) Special Conditions

18. *Grantee agrees* that if a new comprehensive map or zoning map is created or an existing map is revised or updated the product(s) need to be submitted in an electronic form compatible with the Environmental Systems Research Institute's (ESRI) ArcGIS (Coverage, Shapefile and Geodatabase)

19. *Grantee agrees* GEO/GIS data should be free of topological errors and Metadata compliant with the current State of Oregon Metadata Standards accessible at <http://www.oregon.gov/DAS/EISPD/GEO/standards/standards.shtml> under file name Introduction to Oregon Metadata Standard (metadata_Opportunity[1].pdf). The Projection of the data may be determined by the jurisdiction. All data should have the projection defined with the dataset and must be documented in the metadata.
20. *Grantee agrees* that DLCD may display appropriate Product(s) on its web interface or corporate GIS data generated under this Contract and any additional data provided that is not specifically restricted into state agency databases, acknowledging that Grantee and agents of Grantee are not responsible for the accuracy of such data. DLCD may also share the data specifically generated under this Contract with other agencies and organizations, as this is data that DLCD owns as Work Product(s) under Standard Award Conditions Number 5.
21. *Grantee agrees* to produce and submit to DLCD those Product(s) as specified in this Contract, including but not limited to those Products further described in Grantee's Grant Application Narrative or Scope of Work (SOW).
22. *Grantee agrees* to not use or charge grant funds provided under this Contract for consultant(s) trip expense(s), lodging, or any other expense submitted by consultant(s), except for the initial consultant(s) trip to Grantee. Grantee may use grant funds to pay for Product(s) produced by consultant(s).
23. *Grantee agrees* to not use or charge grant funds provided under this Contract for any regular scheduled or other scheduled meetings and hearings. Grantee must use its own funds, or in-kind contributions for all regularly scheduled or other scheduled meetings and hearings.
24. *Grantee agrees* to provide copies of all final Product(s) produced under this Contract to DLCD in the manner described in the following Scope of Work and in **Attachment A-Grantee's Grant Application and Narrative**.
25. *Grantee agrees* to perform the following activities described in further detail in the Special Award Conditions Program and Timeline described below and the Grantee's application (**Attachment A-Grantee's Grant Application and Narrative**). "Item No." Note: designation P1= Interim Payment; FP = Final Payment of Contract; R1 or R2 = Report one or two.

City of Portland Scope of Work

Project Purpose Statement

The purpose of this grant is to assist the City of Portland in the development of alternative development scenarios and supporting evaluation criteria and an examination of alternative mobility measures and policies necessary to support existing and future development patterns. Grant work would complement the efforts of partner agencies, particularly Metro and the Oregon Department of Transportation, by testing emerging planning concepts in particular places representing different types, mixes and intensities of urban development. Grant products will be designed, not only to fulfill Portland periodic requirements, but also to serve as useful models and test cases for other jurisdictions.

In particular, the grant would support work to carry out Subtasks 3A, 3B, 3C and 4E of Portland's DLCD-approved Periodic Review work program. This work is the middle part of the on-going work program and concerns the consideration of alternatives (Task 3) and the development of new policy (Task 4).

Project Overview and Management

Overall management of the Project will be the responsibility of the City of Portland as assisted by the DLCD Grant Manager. Specific Project management duties of the City of Portland will include:

- a. Organizing and managing the advisory committee, if one is appointed;
- b. Selecting a consultant and Contracting for consultant services, if one is appointed;
- c. Overseeing consultant work described in this scope of work;
- d. Scheduling and managing meetings, including activities such as, preparing and distributing meeting notices, agendas, and summaries; and assisting the consultant with meeting facilitation.

Agency Role

DLCD will provide financial, administrative and technical assistance to the Project. DLCD supports the collaborative, regional approach envisioned in the Project and agrees to work equally and fairly with each jurisdiction to help assure that state and local interests are optimized. DLCD recognizes the CONSIDERATION OF ALTERNATIVES, and POLICY CHOICES will inform, but will not bind, future land use decisions of the cooperating jurisdictions.

Project Meeting Materials

Written Project documents or memorandum prepared by the City of Portland shall be provided in electronic format (pdf and Word) one week prior to any scheduled meeting.

City of Portland shall prepare meeting agendas and summaries for each meeting. City of Portland shall distribute meeting materials electronically to project committee members and/or City Personnel at least five (5) days prior to any scheduled meeting.

Project Deliverables Schedule

The deliverables or "Products" or "Work Products" schedule identified throughout this scope of work refers to months after when the Contract's Effective Date.

Expectations about Written and Graphic Products

In accord with Section 2 of the Special Award Conditions, all reports, studies, and other documents produced under this scope of work must indicate on the cover or the title page an acknowledgement of the financial assistance provided by DLCD and Bear the following legend: "This project is funded by Oregon general fund dollars through the Department of Land Conservation and Development. The contents of this document do not necessarily reflect the views or policies of the State of Oregon."

The city shall provide one CD copy and one paper copy of the final Products to DLCD, Metro, and Multnomah County, Washington County.

Work Program and Timeline:**GRANT TASK ONE**

Objective: Fulfillment of the following periodic review requirement:

TASK 3: CONSIDERATION OF ALTERNATIVES*Subtask B - Thematic Alternatives*

Simplified consequence analysis will be applied to different patterns of urban development. Alternatives will be designed to emphasize particular community values. There will be several of these.

Subtask C – Detailed Analysis

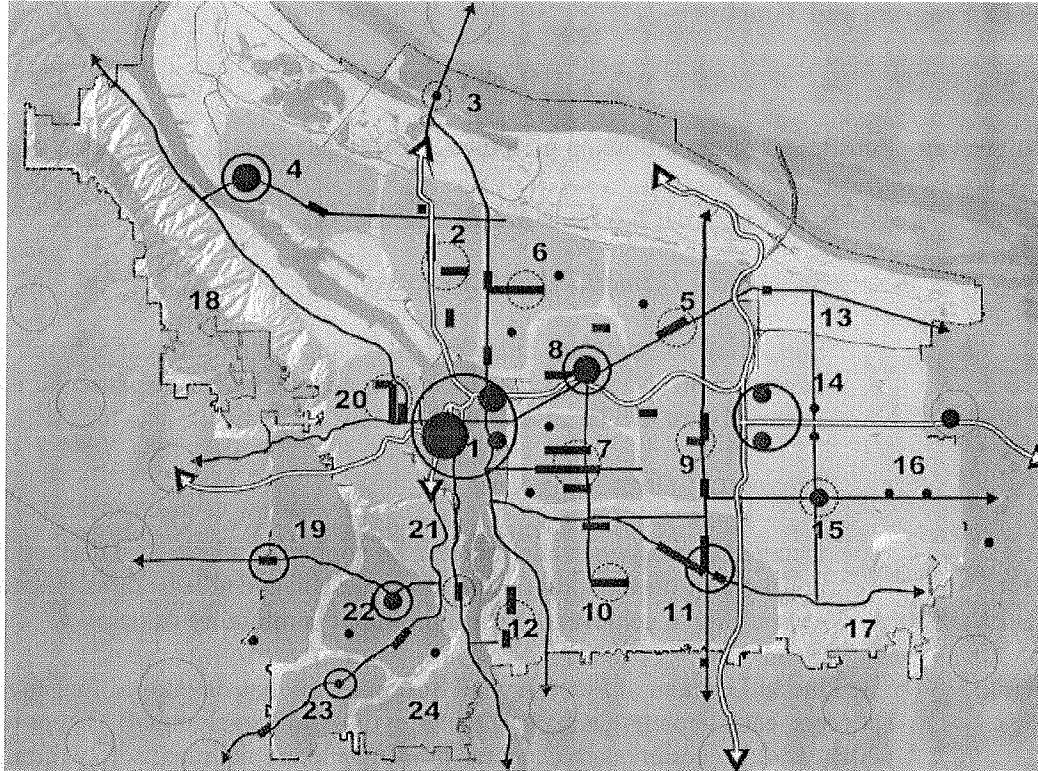
Detailed consequence analysis will be applied to a base case derived from a probable build-out of the existing comprehensive plan, and at least three other alternatives – each trying to achieve an optimum mix of community values.

Work: The Portland Bureau of Planning and Sustainability has developed four future development concepts, each depicting a different pattern of urban development. There is a base case, which would accommodate expected housing and employment solely through opportunities remaining on the City's existing Comprehensive Plan Map. There are also three alternatives to the base case. One alternative differs from the base case by assuming greater housing and employment opportunities within the Central City. The second assumes greater opportunities in neighborhood "hubs" outside the Central City, while the third assumes greater opportunities in "corridors" outside the Central City.

The base case and the three alternatives all share the same forecast and "control total," that is, they each will accommodate the same amount of new jobs and households within a twenty-year planning period. This control total will be derived from and coordinated with the regional forecasts adopted by the Metro Council.

Awarded grant funds will be used to refine each of the four concepts into an operational scenario. Each scenario will have a detailed and unique distribution of future housing and employment - different and detailed enough for comparative analysis. The Bureau will form the analysis around twelve measures derived from the Portland Plan. Each of these measures can be described as an economic, social, environmental or energy consequence within the meaning of Statewide Planning Goal 2.

The map below depicts 24 "subareas" that correspond to "20-minute neighborhoods" or "complete communities." It also depicts hubs and corridors, and five exiting neighborhood development typologies – pink is central, orange is inner, yellow is eastern, and green is western. These typologies are explained in the Portland Plan.



The 24 subareas depicted above will be the smallest scale of analysis, but analysis will also be done by district (North, East, Southeast), and city-wide. The analysis will describe how each scenario performs under each of the 12 evaluation criteria.

Task 1 Product: Summary report indicating performance under 12 evaluation criteria for four different future development assumptions.

Task 1 Budget: \$30,000.00

Task 1 Personnel Services:

One Geographic Information Systems Analyst (part time)
 One Transportation Model Specialist (part time)
 One City Planner (part time)

Task 1 Timeline: 4 months

GRANT TASK TWO

Objective: Fulfillment of the following periodic review requirement:

TASK 4: POLICY CHOICES*Subtask E - The Transportation Element*

2. If authorized by the Regional Transportation Plan the City might adopt alternatives to the "Level of Service" standard for characterizing the adequacy of existing and proposed transportation facilities. These alternatives might apply citywide or only within designated areas. In the absence of further state guidance the City might also adopt standard methods for examining the transportation effects for proposed intensifications or urban development.

Task 2 Work:

Metro did not completed work on alternative mobility measures that were supposed to be a component of the latest Regional Transportation Plan. Although the regional plan does not contain expected alternative measures, it does authorize local governments to develop alternative measures as part of their required Transportation System Plan updates. In addition, proposed changes to the Oregon Highway Plan create an additional expectation that alternative measures will be in development at the state and regional level. The City of Portland is participating in these efforts and continues to be interested in exploring opportunities to provide a fuller analysis of mobility.

While the mobility of passenger motor vehicles and light trucks is one measure of success of a transportation system, it is not a complete measure for developed urban centers served by multiple modes. A more balanced or "complete" measure of transportation success would examine several modes. The purpose of this task is to build upon important work begun by the Oregon Department of Transportation, the Oregon Department of Land Conservation and Development and Metro to develop alternative performance measures that are applicable to conditions and needs in Portland. Portland would attempt to become an "early adopter" of the concepts emerging from ODOT and Metro to recognize a fuller and broader measure of "success" in providing and managing transportation facilities.

As a test of concept, the City would examine candidate alternative performance in the context of four generic built environment types: the central city, a mixed-use hub outside the central city, a transit corridor, and a residential neighborhood. The measures could be described in terms of mobility on individual streets; collective mobility on associated streets forming an single analysis corridor, mode splits; safety; access to employment, goods and services, or system "completeness."

The following is an example of how results could be displayed in table form.

Central City	System Performance
Level of Service	
Alternative Standard #1	
Alternative Standard #2	
Mixed-use Hub	System Performance
Level of Service	
Alternative Standard #1	
Alternative Standard #2	
Transit Corridor	System Performance
Level of Service	
Alternative Standard #1	
Alternative Standard #2	
Residential Neighborhood	System Performance
Level of Service	
Alternative Standard #1	
Alternative Standard #2	

This work is not designed to provide detailed city-wide or sub-area modeling for transportation system planning, but to develop a policy framework for selecting the most suitable measures from the various candidates; particularly for identifying and the most suitable measures of transportation success for mixed-use, multimodal areas in the developed, and redeveloping, parts of Portland. The City may well determine that there is no “one size fits all” set of measures, and different sets of alternative measures should be developed for different parts of the City.

The completed grant task would provide the policy framework to make specific recommendations that could be incorporated into the City’s Comprehensive Plan or Transportation System Plan.

Task 2 Product:

The product would be a technical report describing different methods for measuring transportation success and a policy framework recommending particular measures as most appropriate for Portland, or for different parts of Portland. It is possible that City would find that different “clusters” of suitable measures are closely associated with different urban design typologies. If so, Portland’s work might be of value to other cities with similar design types.

Task 2 Budget: \$40,000.00

Task 2 Personnel Services:

One Transportation or Land Use Planner (part time)

Task 2 Time Line: 6 Months

GRANT TASK THREE

Objective: Fulfillment of the following periodic review requirement:

TASK 4: POLICY CHOICES

Subtask E - The Transportation Element

3. The City will also consider a system of modal preferences or desired mode splits as part of its street classification scheme.

Work: Most of Portland's streets are classified for multiple modes. Portland has standard street design cross-sections, which if built as described, would serve bicycles, pedestrians, passenger vehicles and light trucks, large trucks, and emergency vehicles. The city also has a "green street" standard street designs intended to ensure the responsible handling of and pre-treatment of stormwater. In practice, when a street is built or improved, the more modes allowed, the more features required. An example might be separated bikeways on a freight street within a pedestrian district. Portland is a largely developed city, and existing right-of-way is often inadequate to include all the features desired for safe operation of all the allowed modes.

The City currently lacks adequate policy to resolve conflicts in situations where all the required modal design features simply will not fit within the available right-of-way, and in which there are no opportunities to expand rights-of-way because the projects are in fully-developed urban areas.

Because the City has a "level of service" performance measure for motor vehicles and light trucks, we have an implied and *de facto* preference for this mode, followed by an opportunistic "squeezing-in" or features for other modes. While this is often a good solution, it is not always the best solution.

This work will examine the establishment of preferential hierarchies and clear protocols for making tradeoffs whenever right-of-way is severely constrained. Proposed policy and protocols will analyze system performance and policy implications resulting from implementing a modal preference (hierarchy) policy.

The City will develop draft policies with specific implementing measures to carry out these policies in a consistent manner. A context-sensitive approach will lend itself to greater adaptability in the design of complete streets, and has the potential to produce lower-cost, "practical design" solutions that make the best use of scarce public resources. The policies will be designed to provide "complete streets" within at least four different types of built urban environments.

Task 3 Product:

The product would be a report containing draft policies and recommended implementing measures for updating Portland's Transportation System Plan. Policies and measures would be identified to achieve desired splits among multiple travel modes, and when this is not possible, to serve preferred modes in at least four different urban contexts.

Task 3 Budget: \$30,000.00

Task 3 Personnel Services: One Transportation or Land Use Planner (part time)

Task 3 Timeline: 5 Months

Payment Schedule

Milestone	Description	Completion Date
Report One	Additional Information Required by the Awarded Grant	March 20, 2012
Report Two	Report Transmitting Completed Product One	July 1, 2012
Payment One (Interim) for \$30,000	Request Made after Acceptance of Reports One and Two, and Completed Products One.	July 30, 2012
Report Three	Report Transmitting Completed Product Two	November 1, 2012
Report Four	Report Transmitting Product Three	May 30, 2013
Payment Two (Final) for \$70,000	Request Made after Acceptance of Reports Three and Four and Completed Products Two and Three	May 30, 2013

Task R1, R2, R3 and R4 – Report 1, 2, 3 and 4 submit as described below

R1 – Report One, Report Two, R3 – Report Three, and R4 – Report Four: Submittal of Reports by Completion date in Payment Schedule Table.

Work Product: Send one (1) copy of the Work Product(s) in a hard copy and one (1) digital CD to the Grant Administrative Specialist and one (1) copy of the Product(s) in a hard copy and one (1) digital CD to the Grant Manager at the addresses listed in **Attachment B – DLCD Contact Information**.

P1 – Interim Payment

Interim Payment: Reimbursement of up to \$30,000.00 upon submittal of Work Product(s) listed in **Task 1, R2, and verification of R1-Report1**; and a signed **Attachment C: DLCD Interim Reimbursement Form** request acceptable to DLCD.

Submit: one (1) copy each of the work product(s) in a hard copy and one (1) CD to the Grant Manager, and one (1) copy each product(s) in a hard copy and One (1) CD to the Grant Administrative Specialist to addresses listed in **Attachment B – DLCD Contact Information**.

Send Attachment C – Interim Reimbursement Form, and accompanying Work Product(s) to the Grant Administrative Specialist. Payment will not be made until all copies are received in the Salem Office and approved by DLCD.

FP – Final Payment

Final Payment: Reimbursement up to \$70,000.00 and the balance of the previously unused grant funds from P1 for this grant award upon submittal of Work Product(s) listed in **Tasks 2, 3, and R4; and Verification of R3-Report 3 and submitted no later than May 30, 2013;** and a signed **Attachment C - DLCD Final Reimbursement Form** request acceptable to DLCD.

Submit, no later than **June 30, 2013** (30 days after the closeout): one (1) copy each of the work product(s) in a hard copy and one (1) CD to the Gant Manager, and one (1) copy each product(s) in a hard copy and One (1) CD to the Grant Administrative Specialist to addresses listed in **Attachment B – DLCD Contact Information**.

Send Attachment C – Final Reimbursement Form, and the accompanying product(s) to the Grant Administrative Specialist. Payment will not be made until all copies are received in the Salem office and approved by DLCD.

Budget Summary

Task 1 – Considerations of Alternatives	\$ 30,000
Thematic Alternatives	\$ 000
Detailed Analysis	\$ 000
Task 2 – Policy Choices – Transportation Element	\$ 30,000
Task 3 – Policy Choices – Transportation Element	\$ 30,000
TOTAL	\$ 100,000

**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
STANDARD AWARD CONDITIONS**

Subject to any applicable debt limitation set forth in Article XI, Section 10, of the Oregon Constitution, by city Charter or otherwise, and contingent upon funds being appropriated by the Legislative Assembly and sufficient allotment authority therefore, Grantee agrees to the provisions below.

1. **DLCD Funds:** DLCD certifies that on the Effective Date of this grant sufficient funds are authorized, available, and set-aside, Subject to the provision of ORS 291.261.
2. **Reporting:** At any time before the Closing Date, when requested by the DLCD Grant Manager, Grantee shall provide a written report on the status and progress of Work performed under this Contract within a mutually agreed time frame.
3. **Payments:** DLCD payments to Grantee under this Contract shall be made in accordance with the grant payment schedule described in the "Special Award Conditions Product(s), Activities, or Payments Table or Scope of Work" of this Contract. Payment is contingent upon DLCD's acceptance of the Product(s) or Work Product(s) produced under the Contract. Grantee agrees that reimbursement of all amounts requested by Grantee is contingent upon compliance with all the terms and conditions of this Contract.
4. **Penalty:** Payments to Grantee may be withheld or reduced if DLCD determines that work performed under this Contract is unsatisfactory, based on the best professional judgment of the DLCD Grant Manager, or if one or more terms or conditions of this Contract have not been met to the extent required by law.
5. **Ownership of Work Product(s).**
 - a. **Definitions.** As used in this Paragraph 5 and elsewhere in this Contract, the following terms have the meanings set forth below:
 - i. **"Grantee Intellectual Property"** means any intellectual property owned by Grantee and developed independently from the Project.
 - ii. **"Third Party Intellectual Property"** means any intellectual property owned by parties other than DLCD or Grantee.
 - iii. **"Product(s)" or "Work Product(s)"** means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Grantee is required to deliver to DLCD pursuant to the Project and this Contract, including but not limited to any Product(s) or Work Product(s) described in Special Award Conditions Number 2.

- b. Original Works.** All Product(s) or Work Product(s) created by Grantee pursuant to the Project and this Contract, including derivative works and compilations, and whether or not such Work Product(s) is considered a work made for hire or an employment to invent, shall be the exclusive property of DLCD. DLCD and Grantee agree that such original works of authorship are "work made for hire" of which DLCD is the author within the meaning of the United States Copyright Act. If for any reason the original Product(s) or Work Product(s) created pursuant to the Project is not "work made for hire," Grantee hereby irrevocably assigns to DLCD any and all of its rights, title, and interest in all original Product(s) or Work Product(s) created pursuant to the Project, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.
- c. Upon DLCD's reasonable request,** Grantee shall execute such further documents and instruments necessary to fully vest such rights in DLCD. Grantee forever waives any and all rights relating to original Product(s) or Work Product(s) created pursuant to the Project, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- i. In the event that Product(s) or Work Product(s) created by Grantee under this Contract is** Grantee Intellectual Property or is a derivative work based on Grantee Intellectual Property is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to DLCD an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Grantee Intellectual Property employed in the Product(s) or Work Product(s), and to authorize others to do the same on DLCD's behalf.
- ii. In the event that Product(s) or Work Product(s) created by Grantee under this Contract is a** derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Grantee shall secure on DLCD's behalf and in the name of DLCD an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Product(s) or Work Product(s), and to authorize others to do the same on DLCD's behalf.
- d. Grantee Intellectual Property.** In the event that Product(s) or Work Product(s) is Grantee Intellectual Property, Grantee hereby grants to DLCD an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Grantee Intellectual Property, and to authorize others to do the same on DLCD's behalf.
- e. Third Party Works.** In the event that Product(s) or Work Product(s) is Third Party Intellectual Property, Grantee shall secure on DLCD's behalf and in the name of DLCD, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on DLCD's behalf.

6. *Indemnity.*

- a. **General Indemnity. Subject to Limitation of State of Oregon Constitution and State of Oregon Tort Claims Act.** Grantee shall defend, save, hold harmless, and indemnify the State of Oregon and DLCD and their Officers, Employees, Agents from and against all Claims, Suits, Actions, Losses, Damages, Liabilities, Costs and Expenses of any Nature whatsoever, including Attorney Fees, resulting from, arising out of, relating to the Activities of Grantee or its Officers, Employees, Subcontractors, or Agents under Contract.
- b. **Indemnity for Infringement Claims. Subject to Limitation of State of Oregon Constitution and State of Oregon Tort Claims Act. Without limiting the generality of section 6.a,** Grantee Expressly agrees to Defend, Indemnify, and hold DLCD, the State of Oregon and their Agencies, Subdivisions, Officers, Directors, Agents, and Employees harmless from any and all Claims, Suits, Actions, Losses, Liabilities, Costs, Expenses, including Attorney's Fees, and Damages arising out of or related to any claims that the Product(s) or Work Product(s) or Work Task(s) or any other tangible or intangible items delivered to DLCD by Grantee that may be the subject of protection under any State or Federal Intellectual Property Law or Doctrine, or DLCD's use thereof, infringes any Patent, Copyright, Trade Secret, Trademark, Trade Dress, Mask Work, Utility Design, or Other Proprietary Right of any Third Party; provided, that State shall provide Grantee with prompt written notice of any infringement claim.
- c. **Control of Defense and Settlement.** Grantee shall have control of the Defense and Settlement of any claim that is subject to sections 6.a or 6.b; however, neither Grantee nor any Attorney engaged by Grantee shall defend the 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 first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, Authority to Act as Legal Counsel for the State of Oregon, nor shall Grantee settle any claim on behalf of the State of Oregon without the Approval of the Attorney General. the State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

7. *Termination:*

- a. **DLCD's Right to Terminate at its Discretion.** At its sole discretion, DLCD may terminate this Contract:
 - i. **For its convenience** upon thirty (30) days' prior written notice by DLCD to Grantee;
 - ii. **Immediately upon written notice** if DLCD fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow DLCD, in the exercise of its reasonable administrative discretion, pay for the Product(s) or Work Product(s) or Work Task(s) hereunder; or
 - iii. **Immediately upon written notice** if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the DLCD's financial assistance under this Grant Contract is prohibited or DLCD is prohibited from paying for the Product(s) or Work Product(s) or Work Task(s) hereunder from the planned funding source.

- b. **DLCD's Right to Terminate for Cause.** In addition to any other rights and remedies DLCD may have under this Contract, DLCD may terminate this Contract immediately upon written notice by DLCD to Grantee, or at such later date as DLCD may establish in such notice, or upon expiration of the time period and with such notice as provided below, upon the occurrence of any of the following events:
- i. **Grantee is in default** because Grantee institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
 - ii. **Grantee is in default** because Grantee commits any material breach or default of any covenant, warranty, obligation or Contract under this grant Contract, fails to perform any of its obligations under this grant Contract within the time specified herein or any extension thereof, or so fails to pursue its work hereunder as to endanger Grantee's performance under this grant Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after DLCD's notice, or such longer period as DLCD may specify in such notice.
- c. **Grantee's Right to Terminate for Cause.** Grantee may terminate this grant Contract with written notice to DLCD upon the occurrence of the following events:
- i. **DLCD is in default** because DLCD fails to pay Grantee any amount due pursuant to the terms of this Contract, and DLCD fails to cure such failure within thirty (30) calendar days after Grantee's notice or such longer period as Grantee may specify in such notice; or
 - ii. **DLCD is in default** because DLCD commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and DLCD fails to cure such failure within thirty (30) calendar days after Grantee's notice or such longer period as Grantee may specify in such notice.
- d. **Return of Property.** Upon termination of this Contract for any reason whatsoever, Grantee shall immediately deliver to DLCD all of DLCD's property (including without limitation any Product(s) or Work Product(s) or Work Task(s) for which DLCD has made payment in whole or in part) that is in the possession or under the control of Grantee in whatever stage of development and form of recordation such property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Grantee shall immediately cease all activities hereunder, unless DLCD expressly directs otherwise in such notice of termination. Upon DLCD's request, Grantee shall surrender to anyone DLCD designates, all documents, research or objects or other tangible things needed to complete the Product(s) or Work Product(s) or Work Task(s).
- e. **Termination** under Paragraph 7 shall be without prejudice to any claims, obligations, or liabilities either party may have incurred prior to such termination.
8. **Failure to Comply:** If a party fails to comply with any of the requirements or conditions of this Contract, the other may, without incurring liability, refuse to perform further pursuant to this Contract. DLCD shall make no further reimbursement to Grantee and Grantee shall upon demand by DLCD promptly repay DLCD all unexpended grant funds and grant funds expended in breach of this Contract.

9. **Accounting and Fiscal Records:** Using standard accepted accounting and fiscal records, the Grantee shall maintain records of the receipt and expenditure of all funds subject to this Contract for a period of six (6) years after the Closing Date, or for such longer period as may be required by applicable law or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Accounting records related to this Contract will be separately maintained from other accounting records.
10. **Closeout report:** The Grantee shall submit a closeout report to DLCD within thirty (30) days after termination of the grant or the Closing Date of this Contract whichever is earlier.
11. **Closeout Payment:** Reimbursement up to the total amount of remaining grant funds will be made upon submittal of all required Product(s) or Work Product(s), up to and including those required for the final reimbursement, and a signed DLCD closeout form acceptable to DLCD. DLCD shall authorize payment to the Grantee within ninety (90) days of such submittal for all required Product(s) or Work Product(s) or Work Task(s) that are accepted by the DLCD Grant Manager after review for compliance with the Contract.
12. **Closeout Penalty:** DLCD reserves the right to reduce or withhold final payment if a closeout report is submitted to DLCD after the thirty (30) days, as referenced in Standard Condition Number 10.
13. **Subsequent funding:** Eligibility for subsequent funding to the Grantee is contingent upon receipt of the closeout report as referenced in Standard Condition Number 10.
14. **Audit:** The Oregon Secretary of State, Attorney General of the State of Oregon and the Director of DLCD or any other duly authorized representative of DLCD shall have access to and the right to examine any records of transactions related to this Contract for six (6) years after the final reimbursement under this Contract is authorized by DLCD.
15. **Appropriate use of funds:** Grant funds cannot be used for any purpose other than for the Project and Product(s) or Work Product(s) or Work Task(s) done in accordance with the Work Program and Timeline described in the Scope of Work.
16. **Amendments:** Amendments must be facilitated by the DLCD Grant Manager. An amendment to this Contract may be initiated at any time during the grant period, but must be received at the DLCD Salem Office at least ninety (90) days prior to the Closing Date and be signed by all parties on or before sixty (60) days prior to the Closing Date.