

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 28475
FLEXIBLE FUNDS PROGRAM 2011
Smart Trips: Streetcar (Downtown & Central Eastside)**

185642

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 CITY OF PORTLAND, BUREAU OF TRANSPORTATION, 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 Local Agency Certification Program Agreement No. 21492 incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with City for the performance of work on this improvement Project. The Certification Program allows State to certify a Local Agency's procedures and delegates authority to the certified Local Agency to administer federal-aid projects that are not on the National Highway System.
2. The downtown and eastside Portland neighborhoods, as shown on "Exhibit A," are a part of the City's street system under the jurisdiction and control of City.
3. The Supplemental Project Agreement will be considered a required test project that constitutes conditional certification for consultant selection, should consultant selection be performed by Agency, as described in Local Agency Certification Program (Certification Program) Agreement No. 21492.

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. Under such authority, City agrees to educate downtown and central eastside Portland residents on the transportation options available which includes education about new fare technologies and how to connect to Portland Streetcar and Trimet, hereinafter referred to as "Project." City shall provide a copy of the completed work product to ODOT Program Manager at completion of the project. The completed work product will be a final report on the SmartTrips program including a detailed description of the number of residents and businesses reached, number of materials distributed and copies of all materials used the program, behavior change results stemming from the program including pre and post ridership on both bike share and streetcar systems and a detailed budgeted of expenses. The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof. The Project description, tasks and deliverables, schedule and budget are further described in Exhibit B, attached hereto and by this reference made a part hereof.
2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$481,080, which is subject to change. STP funds for this Project will be limited to \$400,000. The Project will be

- financed with STP funds with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds. Agency match includes 10.27% required match and additional funds to provide a total of \$81,000 or 20% of the total project whichever is less. The STP Flexible Funds are available for Planning of the Project.
3. Agency shall fulfill the match requirement in the form of a cash payment to State.
 4. City shall make all payments for work performed on the Project, including all construction costs, and invoice State for 100 percent of its costs. State shall reimburse City invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement, any deposited local funds, and any non-participating costs will be the responsibility of the City. State shall perform work in the estimated amount of \$7000. The work being performed by State includes federal oversight, compliance review, project development and construction monitoring, and Project documentation and accounting closeout. State shall simultaneously invoice FHWA and City for State's Project costs, and City agrees to reimburse State for the federal-aid matching state share and any non-participating costs as determined in accordance with paragraph number 3, above upon receipt of invoice. Failure of City to make such payments to State may result in withholding of City's proportional allocation of State Highway Trust Funds until such costs are paid. Agency understands that State's costs are estimates only and agrees to reimburse State for the actual
 5. If City fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the City's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such City breach.
 6. All STP Flexible Funds must adhere to the specific obligation and completion requirements. Non-construction projects must be ready for obligation no later than September 30, 2012 and completed or implemented by December 31, 2014. Construction projects must obligate the Preliminary Engineering phase by September 30, 2012, Right-of-Away and Construction phases must be obligated by September 30, 2013. Construction projects must be completed by December 31, 2014. After September 30, 2012 for non-construction Projects and September 30, 2013 for construction projects the State may withdraw and reassign any STP Flexible Funds not yet obligated for the Project and shall have no obligation to fund any remaining phases of work through the Flexible Funds Program. The withdrawal of funds will not affect funding and payments for Preliminary Engineering or other phases of work that were obligated prior to the above stated dates.
 7. If Agency cannot meet obligation of STP Flexible funds as intended by the program as stated in paragraph 6, above, then Agency shall adhere to the Project Change Request process as stated in Exhibit B.
 8. Agency shall submit Monthly Progress Reports to State's Contact and State's Flexible Funds Program Manager and Project Change Requests to State's Contact, following the process as listed in Exhibit B.
 9. City shall select consultants, design, advertise, bid, award the construction contract, and perform construction contract administration. City understands that if consultant selection is performed on this Project, that portion of the Project shall be considered a test project and agrees to comply with all of the terms and conditions found in Certification Program Agreement No. 21492. City agrees that consultant selection, design, advertising, bid, award the construction contract, and

construction administration for City's federal-aid non-NHS projects shall be performed only by City's Bureau of Transportation, Development and Capital Group and Engineering Services

10. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at City expense. State's Regional Local Agency Liaison or designee will provide City with a written notice to proceed when FHWA approval has been secured and funds are available for expenditure on this Project.
11. 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.
12. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
13. Certification Program Agreement No. 21492 was fully executed on November 1, 2005 and Amendment one (1) was executed on September 25, 2007. This Agreement is subject to the terms and provisions of the Certification Program Agreement.
14. City shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and/or service demand. State and City agree that the useful life of this Project is defined as 20 years.
15. State may conduct periodic inspections during the life of City's Certification Projects to verify that Projects are being properly maintained and continue to serve the purpose for which federal funds were provided.
16. The Parties agree that this Agreement may be terminated if the funds for this Project are not obligated as stated in Terms of Agreement, paragraph 3. Upon termination of this Agreement, State may reassign any STP Flexible funds not yet obligated for the Project and will have no obligation to fund any remaining phases of work through the Flexible Funds Program.
17. This Agreement may be terminated by mutual written consent of both Parties.
18. 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 within the time specified herein or any extension thereof.
 - 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 City fails to provide payment of its share of the cost of the Project.

- d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
19. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
20. City, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for City'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 FHWA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of 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.
21. If City fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the City's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such City breach.
22. State's Flexible Funds Program Manager is Carol Olsen, Active Transportation Section, 555 13th Street NE, Suite 2, Salem, Oregon 97301-4178, Salem, OR 97302, 503-986-3327, carol.a.olsen@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
23. City's Project Manager for this Project is Dan Bower, 1120 SW 5th Avenue, Suite 800, Portland, OR 97211, 503-823-5667, dan.bower@portlandoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
24. 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.
25. This Agreement and the Certification Program Agreement No. 21492, and all attached exhibits constitutes 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 acknowledges 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 #) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

The Oregon Transportation Commission at its March 21, 2012 meeting approved the Flexible Funds Program project application list and delegated authority to the Director of the Oregon Department of Transportation to enter into project agreements.

CITY OF PORTLAND, acting by and through
its elected officials

By _____
Mayor

Date _____

By _____
Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
City Legal Counsel

Date _____

City Contact:

Dan Bower, Project Manager
City of Portland
1120 SW 5th Avenue, Suite 800
Portland, OR 97211
503-823-5667
dan.bower@portlandoregon.gov

State Contact:

Bret Richards, Local Agency Liaison
Oregon Department of Transportation
123 NW Flanders St
Portland, OR 97209
503-731-8288
bret.n.richards@odot.state.or.us

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

By _____
Director

Date _____

APPROVAL RECOMMENDED

By _____
Planning Section Manager

Date _____

By _____
Active Transportation Section Manager

Date _____

By _____
Region 1 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

EXHIBIT A – PROJECT LOCATION MAP

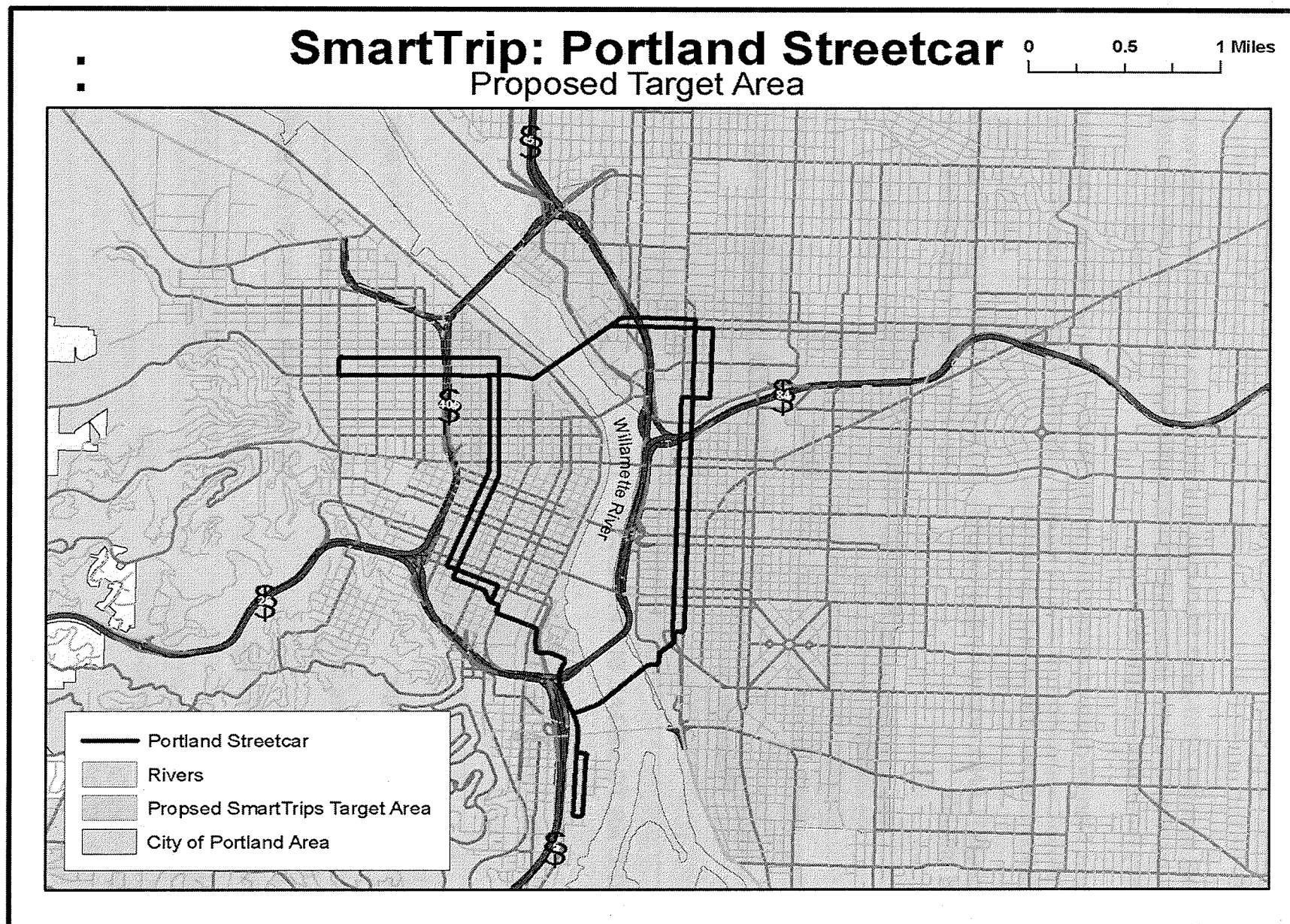


EXHIBIT B - PROJECT KEY MILESTONES AND SCHEDULE

Agreement No. 28475

Application Number: TT-1-006

Project Name: SmartTrips: Portland Streetcar

1. Project Description

This project will educate downtown and central eastside Portland residents on the transportation options available which include education about new fare technologies and how to connect to Portland Streetcar and Trimet. City shall provide a copy of the completed work product to ODOT Program Manager at completion of the project. The completed work product will be a final report on the SmartTrips program including a detailed description of the number of residents and businesses reached, number of materials distributed and copies of all materials used the program, behavior change results stemming from the program including pre and post ridership on both bike share and streetcar systems and a detailed budgeted of expenses.

2. This Project is subject to progress reporting and project change process as stated in paragraphs No. 3 through No. 6 below.

3. **Monthly Progress Reports (MPR)** - Agency shall submit monthly progress reports using MPR Form 734-2862, attached by reference and made a part of this Agreement. The Monthly Progress Report is due by the 5th day of each month, starting the first full month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project's construction contract..

The fillable MPR form and instructions are available at the following address:
<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

Table 1: Project Milestones

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of STP Flexible Funds for the Planning phase of Project	10/31/2012
2	Program/Service Development Complete	6/1/2013
3	Program/Service Implementation Complete	10/31/2013
4	Project Complete	12/31/2014

5. **Project Change Request (PCR) Process** - Agency must obtain approval from State's Contact and State's STP Flexible Funds Program Manager for changes to the Project's scope, schedule,

or budget by submitting a PCR as specified in paragraphs 5a and 5b, below. Agency shall be fully responsible for all costs attributable to changes to the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

- a. **Scope** - A PCR is required for a change in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).
 - b. **Schedule** - A PCR is required if Agency or State's Contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
6. **PCR Form** - Agency must submit all change requests using PCR Form 734-2863, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A PCR may be rejected at the discretion of State's Flexible Funds Program Manager.

The fillable PCR form and its instructions are available at the following web site:
<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>

7. **Consequence for Non-Performance** - If Agency fails to fulfill its obligations in paragraphs No. 3 through No. 6 above, or does not advance the Project according to the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's Active Transportation Section, then (b) withdrawing unused Project funds, and then (c) terminating this Agreement as stated in Terms of Agreement, Paragraphs No. 18a and 18b of this Agreement and recovery of payments pursuant to Special Provision #1.