

Misc. Contracts and Agreements No. 29241
Cross Ref. Master Certification Agreement 26586

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 29241
HIGHWAY BRIDGE PROGRAM (HBP) PROJECT (ON SYSTEM)
NW THURMAN ST: MACLEAY PARK BRIDGE REHAB
Bridge #25B15**

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 Local Agency Certification Program Agreement No. 26586 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. NW Thurman Street is a part of the City's street system under the jurisdiction and control of City.
3. The Project in this Supplemental Project Agreement is one of the required test projects that constitute conditional certification in Bridge Design to be reviewed by State's Bridge Section, described in Local Agency Certification Program (Certification Program) Agreement No. 26586.
4. The project identified in this Supplemental Project Agreement will be considered a required test project that constitutes conditional certification for consultant selection, should consultant selection be performed by City, as described in Local Agency Certification Program (Certification Program) Agreement No. 26586.

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, State and City agree to have City rehabilitate the existing NW Thurman Street Bridge by replacing the existing steel floor beams and timber stringers with modern steel members and replacing the timber deck with Fiberglass Reinforced Polymer (FRP), steel, or concrete equivalent to increase safety for pedestrians. All new bridge elements shall be designed to the American Association of State Highway and Transportation Officials (AASHTO) Standard Specifications for Highway Bridges, 17th Edition. City shall also restore the original 1905 style steel rail

on the sidewalk, replacing the pipe and chain link fencing rail constructed in 1955; remove the old curb flex beam rail and replace with bridge rail designed to withstand loads per AASHTO as noted above; and obtain permits and clearances needed because of the bridge eligibility for listing on the National Register of Historic Places and location over park property. Minor spot painting may be required at the trusses to mitigate localized corrosion and to bring those areas up to the good condition of the rest of the bridge trusses. If determined necessary, new impact panels will be provided at each end of the bridge to reduce impact forces and vibration of the bridge. City shall replace the existing timber sidewalks with a slip resistant metal product and replace the travel lane and sidewalk width which will remain the same due to limited strength capacity of existing trusses which are to remain in place, all of the above hereinafter referred to as the "Project". The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A" and by this reference made a part hereof. The Project Key Milestones, Budget and Progress Report details are further described in "Exhibit B", attached hereto and by this reference made a part hereof.

2. The Project shall be conducted as a part of the Highway Bridge Program (HBP), under Title 23, United States Code. The total Project cost is estimated at \$3,781,000, which is subject to change. HBP funds for this Project shall be limited to \$3,392,691 with City providing the match and any non-participating costs, including all costs in excess of the available federal funds.
3. 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 \$30,000. State shall simultaneously invoice Federal Highway Administration (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 2 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. City understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.
4. City shall submit Monthly Progress Reports to State's Contact and State's Bridge STIP Coordinator and Project Change Requests to State's Contact, following the process as listed in Exhibit B.
5. City agrees to the conditions set forth in Exhibit B.
6. City shall submit the bridge design to ODOT's Local Agency Liaison (LAL) to submit to ODOT's Bridge staff for review prior as described in the following schedule:
 - **30% Plans** delivered to ODOT LAL by May 15, 2013 for a one (1) week review by ODOT. All Comments due back to City by May 23, 2013.

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- **90% Plans, Specifications and Estimate** delivered to ODOT LAL by June 25, 2013 for a one (1) week review by ODOT. All comments due back to City by JULY 3, 2013.
 - **Final Plans, Specifications and Estimate** delivered to ODOT LAL by July 17, 2013 for a one (1) week review by ODOT. All comments due back to City by July 25, 2013.
 - **Completed PS&E Package** due to ODOT LAL by August 5, 2013.
7. City shall design, advertise, bid, award the construction contract, and perform construction 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. 26586. 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.
 8. City agrees to comply with all of the terms and conditions found in Certification Program Agreement No. 26586.
 9. The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at 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.
 10. 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.
 11. 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.
 12. Local Agency Certification Program Agreement No.26586 was fully executed on September 6, 2012. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
 13. 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.
 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 twenty (20) years.

15. State may conduct periodic inspections during the life of City Certification Projects to verify that Projects are being properly maintained and continue to serve the purpose for which federal funds were provided.
16. This Agreement may be terminated by mutual written consent of both Parties.
17. 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.
18. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
19. 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.
20. 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.

21. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 26586, as amended 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.
22. State's Bridge STIP Coordinator is Anna Dunlap, ODOT Bridge Section, 4040 Fairview Industrial Drive SE, MS#4, Salem, OR, 97302, 503-986-3391, anna.m.dunlap@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. State's Project Liaison for the Agreement is Bret Richards, Local Agency Liaison, 123 NW Flanders Street, Portland, OR 97209-4012, (503) 731-8288, bret.n.richards@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.
24. City's Project Liaison for this Agreement is David O'Longaigh, Project Manager, 1120 SW 5th Avenue, Room 800, Portland, OR 97204-1971, (503) 823-0371, david.olongaigh@portlandoregon.gov, or assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #18340) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

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CITY OF PORTLAND, acting by and
through its elected officials

By _____
Mayor

Date _____

By _____
Auditor

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By James H. Van Dyke
City Legal Counsel
CITY ATTORNEY

Date 6/7/13

City Contact:

David O'Longaigh, Project Manager
1120 SW 5th Avenue, Room 800
Portland, OR 97204-1971
(503) 823-0371
david.olongaigh@portlandoregon.gov

State Contact:

Bret Richards, Local Agency Liaison
123 NW Flanders Street
Portland, OR 97209-4012
(503) 731-8288
bret.n.richards@odot.state.or.us

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

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Local Program Certification Manager

Date _____

By [Signature]
Region 1 Manager

Date 5/13/13

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

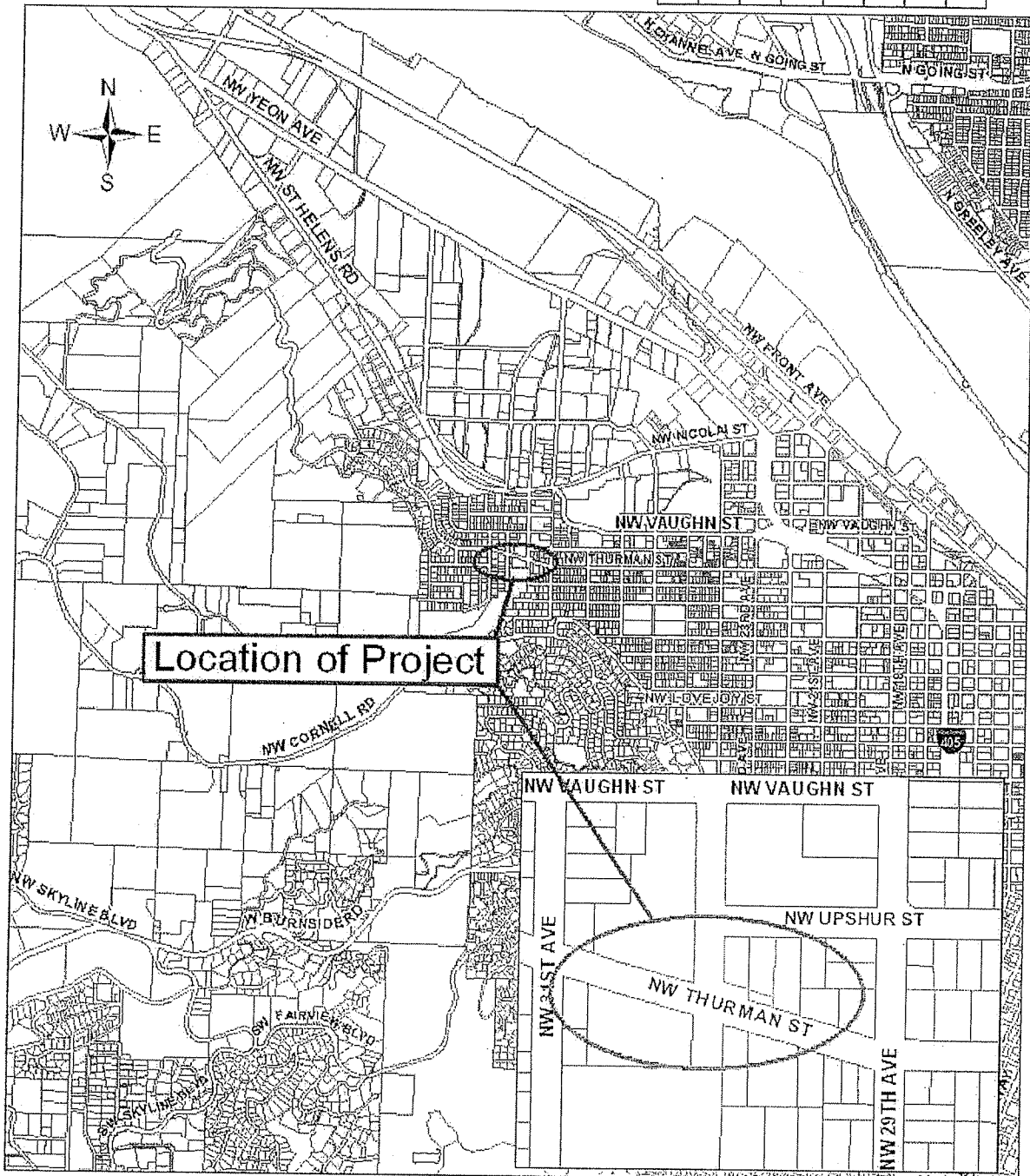


EXHIBIT B – PROJECT KEY MILESTONES AND SCHEDULE
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NW THURMAN ST: MACLEAY PARK BRIDGE REHAB

1. Project Description

State and City agree to have City rehabilitate the existing NW Thurman Street Bridge, by replacing the existing steel floor beams and timber stringers with modern steel members and replacing the timber deck with FRP, steel, or concrete equivalent will increase safety for pedestrians. All new bridge elements shall be designed to the AASHTO Standard Specifications for Highway Bridges, 17th Edition. Also restore the original 1905 style steel rail on the sidewalk, replacing the pipe and chain link fencing rail constructed in 1955; remove the old curb flex beam rail and replace with bridge rail designed to withstand loads per AASHTO as noted above; and obtain permits and clearances needed because of the bridge eligibility for listing on the National Register of Historic Places, and location over park property. Minor spot painting may be required at the trusses to mitigate localized corrosion and to bring those areas up to the good condition of the rest of the bridge trusses. If determined necessary, new impact panels will be provided at each end of the bridge to reduce impact forces and vibration of the bridge. City shall also replace the existing timber sidewalks with a slip resistant metal product and replace the travel lane and sidewalk width in kind due to limited strength capacity of existing trusses which are to remain.

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)** - City 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.

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.

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Table 1: Project Milestones

	Milestone Description	Obligation Date	Estimated Budget
1	Obligation (Federal Authorization) of HBP Funds for the Preliminary Engineering phase of Project	5/15/2013	\$576,000
2	Obligation (Federal Authorization) of HBP Funds for the Right-of-Way phase of the Project	6/14/2013	\$40,000
3	Obligation (Federal Authorization) of HBP Funds for the Utility phase of Project	N/A	N/A
4	Obligation (Federal Authorization) of HBP Funds for the Construction phase of Project	9/30/2013	\$3,165,000
	Total Project Cost:		\$3,781,000

5. Project Change Request (PCR) Process - City must obtain approval from State's Contact and State's Bridge Engineer for changes to the Project's scope, schedule, or budget by submitting a PCR, as specified in paragraphs 5a, 5b, and 5c, below. City 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 or in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).
- b. **Schedule** - A PCR is required if City 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).
- c. **Budget** - The project's estimated budget is used for determining the level of compensation for completed work. Increases or decreases in the budget which require a STIP amendment also require the submission of a Project Change Request to the State's Regional Local Agency Liaison.
- d. PCR requests that result in Project cost increases that are equal to or less than twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is less, can be approved by the State Bridge Engineer. Amendments can be approved and entered into by the State Bridge Engineer.

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- e. PCR requests that result in a Project cost increase in excess of (20) percent of the total estimated Project cost or \$200,000, whichever amount is greater, must be approved by the State Bridge Engineer and the Local Agency Bridge Selection Committee with a majority vote. Amendments must be executed by the same officials who executed the original Agreement.

- 6. **PCR Form** - City 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 City. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion of State's Bridge Engineer.

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 City fails to fulfill its obligations in paragraphs No. 3 through No. 6 above, or does not assist in advancing the Project or perform tasks that the City is responsible for under the Project Milestones, State's course of action through the duration of City's default may include: (a) restricting City 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. 17a and 17b of this Agreement.