

**IMMEDIATE OPPORTUNITY FUND AGREEMENT  
SW Moody Ave and Bond Ave Corridor Improvements**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and the CITY OF PORTLAND, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. The Oregon Transportation Commission ("OTC") at its July 15, 1988, meeting approved establishing an Immediate Opportunity Fund ("IOF") to support primary economic development in Oregon through the construction and improvement of streets and roads. The OTC, at its meeting on March 19, 2015, revised the guidelines for the use of this fund. IOF funds are limited to: Type A) specific economic development projects that affirm job retention and job creation opportunities; Type B) revitalization of business or industrial centers to support economic development; Type C) preparation of Oregon certified project-ready industrial sites; and Type D) preparation of regionally significant industrial areas.
2. SW Curry Street, SW Bond Avenue, and SW Moody Avenue are a part of the city street system under the jurisdiction and control of Agency.
3. The OTC approved the use of IOF funds for the project described in this Agreement on December 15, 2016.
4. By the authority granted in Oregon Revised Statute (ORS) [190.110](#), [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting Parties.

**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. Agency agrees to make roadway improvements near the future development of Oregon Health and Science University (OHSU) Schnitzer Campus, including the Knight Cancer Research Building that meets the IOF criteria. The improvements will consist of constructing approximately three-tenths of a mile of SW Bond Avenue, installing new traffic signals on SW Curry Street, and doing environmental remediation work in the area below the Marquam Bridge, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

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2. The Oregon Business Development Department (OBDD) recommends use of Immediate Opportunity Funds for this Project. State agrees to provide Immediate Opportunity Funds not to exceed \$1,000,000 to help finance environmental work and two traffic signals. Agency and/or others will provide the remaining Project funding.
3. This Agreement is effective on the date all required signatures are obtained and shall terminate upon completion of the Project and receipt of documentation of filled and created positions outlined under Agency obligations or ten (10) calendar years whichever is sooner.

#### **STATE OBLIGATIONS**

1. State shall, at its own expense, assign a Project liaison to monitor work performed. State shall review all environmental documents, Project plans, specifications, and cost estimates prepared by Agency or its consultants within twenty (20) working days of submittal by Agency and before advertisement of construction bids.
2. Upon completion of the Project and receipt of a final invoice, State shall reimburse Agency a lump sum in an amount equal to 50 percent of IOF-eligible Project road construction costs, not to exceed \$1,000,000, as State's portion of the Project.
3. State certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of State, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind State.
4. State's Project Manager for this Project is Christina Hopes, 123 NW Flanders St, Portland, OR 97209, 503-731-4924, Christina.hopes@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.

#### **AGENCY OBLIGATIONS**

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid documents; provide Project management services, and other necessary functions for sole administration of the contract.
2. Upon completion of the Project, Agency will send State a final invoice and State shall reimburse Agency a lump sum in an amount equal to 50 percent of IOF-eligible Project road construction costs, not to exceed \$1,000,000, as State's portion of the Project.
3. Agency shall advertise and award all contracts, and pay all contractor costs. Within two (2) years after the Agreement execution date, unless granted an extension by



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State, Agency shall award a contract for construction of Project. If the time limit expires, this Agreement shall terminate immediately with all Parties.

Agency shall ensure that State's contribution of fifty (50) percent of the actual road construction costs, not to exceed \$ 1,000,000, will be applied to preliminary engineering right of way acquisition and construction only. Agency shall be responsible for funding the remaining Project costs.

4. Agency shall submit to the assigned State Project Manager all environmental documents, Project plans, specifications and cost estimates before advertisement for construction bids.
5. Agency shall lay out and paint the necessary lane lines and erect the required directional and traffic control signing for the Project.
6. Agency shall be responsible for 100 percent of power costs associated with the luminaries installed as a part of this Project. The power company shall send power bills directly to Agency.
7. Agency shall be responsible for and pay to the power company 100 percent of the power costs for the traffic signal. The power company shall send power bills directly to Agency.
8. Agency shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in the city streets in such a manner as to provide adequate protection for said detector loops.
9. Agency agrees that State road standards shall be used for that portion of the Project within State rights-of-way.
10. Agency shall obtain all required state and federal permits, including any environmental permits, and shall comply with all terms of said permits.
11. Agency agrees and understands that Agency will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual if right-of-way acquisition is necessary.
12. Agency or its consultant shall acquire all necessary right of way in accordance with and in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the ODOT Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, they shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the State Region 1 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform

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right of way functions, a separate agreement shall be executed between Agency and State right of way, referencing this Agreement number.

13. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:
- a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
  - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
  - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 2,000,000.
  - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
  - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
  - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.



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14. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and provide the required Workers' Compensation coverage unless such employers are exempt under ORS [656.126](#). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
15. Agency shall keep accurate cost accounting records. Agency shall prepare and submit monthly itemized, progress reports and invoices for construction directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Travel expenses will not be reimbursed.
16. Agency agrees that should any environmental or land-use issues arise at any time during the development or construction of the Project, State may, at its discretion and when exercised in good faith, suspend payments until it is satisfied that the issue has been resolved. However, Agency may use its own funds to continue the Project and shall be reimbursed by State as provided for in this Agreement once State is satisfied that the issue has been resolved.
17. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand. Maintenance responsibilities shall survive termination of this Agreement and upon completion of Project and submission of documentation under Agency Obligation 22 Job Growth Assessment.
18. Agency shall submit to State any change orders that substantially change the plans and specifications or the submitted scope of work as approved by the OTC and as identified in this Agreement.
19. Agency shall provide to State permanent mylar "as constructed" plans for work on state highways.
20. Agency 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, 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 Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that 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.

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21. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency'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 Agency's contractor is prohibited from defending the State of Oregon, or that Agency'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 Agency's contractor if the State of Oregon elects to assume its own defense.
22. Because the purpose of the IOF Type A project is to promote job growth State wishes to assess its investment.
- a. Therefore, within five (5) years of execution of this Agreement, Agency shall provide to State documentation from OHSU that 316 full-time equivalent positions (FTE) have been retained and 225 new FTE positions created and filled at the new location by the construction of The Knight Cancer Research Building. If such documentation cannot be provided within the above stated time limit, Agency shall reimburse State all IOF Funds distributed to Agency as outlined below.
  - b. The targeted number of new FTE positions is the number approved by the OTC. "New FTE positions" shall mean new positions created, filled and remaining on the payroll for at least one (1) year.
  - c. The verification documentation shall be a letter on company letterhead signed by an official of OHSU duly authorized to represent OHSU certifying the number of FTE positions retained and new FTE positions. State, OBDD or the Oregon Secretary of State Audits Division, shall have the right to audit the payroll records of OHSU in order to confirm information in the letter.
  - d. If the documentation shows a deficiency in the number of FTE positions, Agency shall reimburse State on a pro-rated basis. The formula for the pro-rated amount of IOF funds paid to Agency will be an amount equal to the number of actual FTE positions divided by the number of projected FTE positions multiplied by total IOF funds available. Reimbursement will be the amount actually distributed less the pro-rated amount.
23. Reimbursements resulting from a failure to provide job documentation, failure to meet job target goals or failure to obtain Project Site Certification shall be paid within three (3) months after the above stated time limit.
- a. All said reimbursements shall include interest equal in rate for the Highway Trust Fund at the State Treasury established on the date of execution of this



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Agreement. Interest shall accrue from the date of the first withdrawal from the Highway Trust Fund at the State Treasury.

- b. Agency may wish to enter into a separate agreement with OHSU to address pay back of Agency reimbursements to State resulting from OHSU's failure to provide documentation or failure to meet job target goals.
  - c. At Agency's request and upon consultation with OBDD, State may grant a time extension on the reimbursement or a time extension to provide additional job growth. Any extension will only be effective upon amendment to this Agreement.
23. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Agency that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. Agency shall retain and keep all files and records for a minimum of six (6) years after completion of the Project.
24. Agency shall 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 [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency 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.
25. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
26. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
27. Agency's Project Manager for this Project is Steve Szigethy, Capital Project Manager, 1120 SW 5th Avenue, Suite 800, Portland, OR 97204, (503) 823-5117, [steve.szigethy@portlandoregon.gov](mailto:steve.szigethy@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.

## GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.

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2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. 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 Agency 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.
5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), 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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 State on the one hand and of Agency 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. 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 State had sole liability in the proceeding.

6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of 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 Agency on the one hand and of 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. Agency'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.
7. 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.
8. Agency agrees to refund to State all Immediate Opportunity Funds paid to Agency in connection with this Project if this Agreement is terminated for any reason prior to completion of Project and receipt of job assessment documentation. Refund to State shall be within three (3) months from termination date.
9. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
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 2015-2018 Statewide Transportation Improvement Program, (Key #21092) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

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

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Steve Szigethy/Capital Project Manager  
1120 SW 5th Ave, Suite 800  
Portland, OR 97204  
(503) 823-5117  
steve.szigethy@portlandoregon.gov

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

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

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

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

**APPROVED AS TO LEGAL  
SUFFICIENCY**

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

Date \_\_\_\_\_

**State Contact:**

Christina Hopes  
123 NW Flanders Street  
Portland, OR 97209  
503 731-4924  
Christina.hopes@odot.state.or.us



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### EXHIBIT A – Project Location Map

