

Misc. Contracts and Agreements No. 31182
Cross Ref. Master Certification No. 30890

AMENDMENT NUMBER 01
Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
SURFACE TRANSPORTATION PROGRAM - URBAN
Supplemental Project Agreement No. 31182
Foster Road Streetscape: SE 50th - SE 92nd

This is Amendment No. 01 to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," or "State," and **the City of Portland**, acting by and through its elected officials, hereinafter referred to as "City" or "Agency," entered into on July 21, 2016.

It has now been determined by State and City that the Agreement referenced above shall be amended to add local funds to the project, increase total project cost, add scope elements, update the indirect cost rate, add Americans with Disabilities Act Compliance, the Cargo Preference Act, Federal Funding Accountability and Transparency Act, and the indemnification language.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**

TERMS OF AGREEMENT, Paragraph 1, Page 1, which reads:

1. Under such authority, State and City agree to City constructing: pedestrian, bicycle and transit access improvements along SE Foster Road, from SE Powell Boulevard to SE 92nd Ave, hereinafter referred to as "Project." Improvements include new median islands with flashing beacons, marked crosswalks, signage, advanced stop bar and signage at existing marked crosswalks and new marked crosswalk, curb extensions at non-signalized marked crosswalks, ADA ramps, additional street trees, street lighting, bike parking, and bus stop improvements. The Project will reallocate the curb to curb space to provide space for new bike lanes and sidewalk widening in the eastern portion of the Project area. The new bicycle facilities require reducing the number of travel lanes from four to three. The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

Shall be deleted in its entirety and replaced with the following:

1. Under such authority, State and City agree to City constructing: pedestrian, bicycle and transit access improvements along SE Foster Road, from SE Powell Boulevard to SE 92nd Ave, hereinafter referred to as "Project." Improvements include new median islands with flashing beacons, marked crosswalks, signage, advanced stop bar and signage at existing marked crosswalks and new marked crosswalk, curb extensions at non-signalized

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marked crosswalks, ADA ramps, additional street trees, street lighting, bike parking, paving, and drainage facilities. The Project will reallocate the curb to curb space to provide space for new bike lanes and sidewalk widening in the eastern portion of the Project area. The new bicycle facilities require reducing the number of travel lanes from four to three. The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

TERMS OF AGREEMENT, Paragraph 3, Page 1, which reads:

3. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program (STP) - under Title 23, United States Code. State STP Urban (STP-U) funds for this Project shall be estimated at \$3,313,402. The Project will be financed with STP-U funds at the maximum allowable federal participating amount, which is 89.73 percent, with City providing the 10.27 percent match for eligible costs, which is \$379,235 and paying for any non-participating costs and all costs in excess of the available federal funds. City acknowledges that it is also contributing an additional \$778,365 over its match requirement.

Shall be deleted in its entirety and replaced with the following:

3. The Project shall be conducted as a part of the Surface Transportation Program (STP) - under Title 23, United States Code. State STP Urban (STP-U) funds for this Project shall be estimated at \$3,313,402. The Project will be financed with STP-U funds at the maximum allowable federal participating amount, which is 89.73 percent, with City providing the 10.27 percent match for eligible costs, any non-participating costs, and all costs in excess of the available federal funds.

TERMS OF AGREEMENT, Paragraph 9a, Page 2, which reads:

9. Information required by 2 CFR 200.331(a), except for (xiii) Indirect cost rate, shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to City with the Notice to Proceed.
 - a. The indirect cost rate for this project at the time the agreement is written is 79.27 percent and may change upon notice to State and ODOT's subsequent written approval. City may have other indirect cost rates for departments and or disciplines that have been approved for use by their cognizant City and ODOT and these rates may be used on the Project, as applicable.

Shall be deleted in its entirety and replaced with the following:

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9. Information required by 2 Code of Federal Regulation (CFR) 200.331(a) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to City with the Notice to Proceed.

Indirect Cost Rate

- a. As required by 2 CFR 200.331(a)(4), the indirect cost rate for this project at the time the agreement is written is 76.07 percent. This rate may change during the term of this Agreement upon notice to State and ODOT's subsequent written approval.
- b. If the approved rate(s) change(s) during the term of this Agreement, City shall invoice ODOT using the current indirect cost rate(s) for the project on file with ODOT at the time the work is performed. If City does not have approved indirect cost rate(s) on file with ODOT at the time the work is performed, City shall invoice ODOT using a zero percent (0%) rate.

Insert new **TERMS OF AGREEMENT, Paragraph 30**, to read as follows:

30. Americans with Disabilities Act Compliance:

- a. **General:** Agency agrees to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 (together, "ADA") identified in paragraph 1 of the **General Provisions** section of Local Agency Certification Program Agreement.
- b. **ADA Design Standards, Construction Specifications, and Inspections:** Agency agrees to comply with the design and construction standards and the design exception documentation and approval requirements agreed to in the Standards section of the Local Agency Certification Program Agreement. In addition, with respect to ADA-related design standards, design exception approvals, construction specifications, and inspections, Agency agrees to comply with the following:
 - i. For project locations on or along the Oregon State Highway System (state highway), Agency shall apply ODOT's current ADA-related design standards, construction specifications, and design exception documentation and approval requirements for design, modification, upgrade, or construction of Project sidewalks, curb ramps, pedestrian-activated signals, shared use paths, transit stops, park-and-ride, and on-street parking, as applicable to the Project, **including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and current ODOT Curb Ramp Inspection form.** Agency further agrees to utilize ODOT standards to assess and ensure Project compliance with the ADA, and to document ramp inspections per subsection (c.)(i.)

below. Design exceptions on State-owned facilities must be approved by State. For project locations on or along State-owned portions of the National Highway System ("NHS") design exceptions must be approved by State and/or FHWA.

- ii. For project locations **not** on a state highway, including locally-owned portions of the NHS, Agency shall apply its own ADA-compliant design standards, construction specifications, design exception documentation and approval process, and inspection documentation process, as approved by State and FHWA for use on federally funded projects.
- c. **ADA Inspection Forms:** Prior to issuing the Second Notification, per Oregon Standard Specification 00180.50(g) or Agency's approved equivalent, Agency agrees to submit to State the following:
 - i. For all curb ramps designed, constructed, upgraded, or modified for this Project on or along a state highway, submit ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Regional Local Agency Liaison. The completed form is the required documentation from Agency that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form 734-5020 and instructions are available at the following website:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>
 - ii. For all curb ramps not located on or along a state highway, Agency shall complete and keep on file an ODOT- and FHWA-approved ADA curb ramp inspection form to show that each Project curb ramp meets Agency's curb ramp standards and is ADA compliant or conforms to Agency's approved ADA design exception.
- d. **State inspection:** Agency shall promptly notify State of Project completion and allow State to inspect Project sidewalks, curb ramps, and pedestrian-activated signals, shared use paths, transit stops, park-and-ride, and on street parking, as applicable to the Project, located on or along the a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.
- e. **Work Zone Access:** Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone in accordance with the applicable ODOT or Agency Standards, as set forth in subsections (a) through (c) above. For any work zone on or along the state highway, any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route on or along the state highway is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction in accordance with ODOT standards and processes.

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- f. **Reimbursement:** Unless Agency has an approved design exception, State will only reimburse Agency for work that meets the applicable ODOT or Agency standards set forth in subsections (a) through (c) above, regardless of whether the work is on a State-owned or Agency-owned facility.
- g. **On-going Maintenance Obligation:** Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- h. **Survival:** Maintenance obligations in this section shall survive termination of this Agreement.

Insert new TERMS OF AGREEMENT, Paragraphs 31, 32 and 33, to read as follows:

- 31. Agency shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. State and Agency shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
- 32. By signing this Agreement Agency agrees to comply with the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>. If, in the preceding fiscal year, Agency received more than eighty (80%) of its gross revenues from the federal government, those federal funds exceed \$25,000,000 annually, and the public does not have access to information about the compensation of executives through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of

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1934 or section 6104 of the Internal Revenue Code of 1986, Agency shall report the total compensation and names of its top five executives to State. Agency shall report said information to State within fourteen (14) calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as Exhibit "B".

33. 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, Oregon 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 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise solely from the negligent or willful acts or omissions of State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.

Insert new Exhibit B, Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting

3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

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 2018-2021 Statewide Transportation Improvement Program (STIP), (Key #18022) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

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CITY OF PORTLAND, by and through
its elected officials

By _____
Commissioner
Date _____

By _____
Date _____

LEGAL REVIEW APPROVAL

(If required in Agency's process)
APPROVED AS TO FORM

By *[Signature]*
Agency Counsel
Date _____
CITY ATTORNEY *4/19/12*

Agency Contact:

Rich Newlands, Project Manager
1120 AW 5th Ave, Suite 800
Portland, OR 97204
503-823-7780
rich.newlands@portlandoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator
Date _____

APPROVAL RECOMMENDED

By _____
Certification Program Manager
Date _____

By _____
Region 1 Manager
Date _____

By _____
Region 1 Project Services Manager
Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date: _____

State Contact:

Justin Bernt, Region 1 Local Agency
Liaison
123 NW Flanders Street
Portland, OR 97209
503-731-3016
justin.i.bernt@odot.state.or.us

Exhibit B
Federal Funding Accountability and Transparency Act (FFATA)
Subaward Reporting

(For purposes of this Exhibit, references to "your organization" shall mean "Agency" and references to "ODOT" shall mean "State.")
The Oregon Department of Transportation (ODOT) is required to fulfill a federal requirement for contracting under the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS). FFATA reporting is a requirement for subawards (also known as subrecipients) of federal awards in excess of \$25,000. Your organization will enter into an agreement with ODOT where the funding source is a federal grant with a subrecipient relationship. Your organization is required to submit the information below to the Oregon Department of Transportation within fourteen calendar days of execution of the Agreement and annually thereafter, if applicable. (See the following page for further details.)

Legal entity name:

Data Universal Number System (DUNS) number:

Executive compensation

Executive compensation information is also required to determine whether or not the following information must be reported in FSRS:

- a. In your organization's previous fiscal year, did your organization receive 80% or more of its annual gross revenue and \$25,000,000 or more in federal procurement contracts, subcontracts, loans, grants, subgrants, cooperative agreements and federal financial assistance awards subject to the Transparency Act? (Include parent organization, all branches, and all affiliates worldwide.)

☐ Yes ☐ No If "yes," proceed to b. If "no," no further action is required and submittal of this form is not required.

- b. Does the public have access to information about the compensation of the senior executives in your organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

☐ Yes ☐ No If "yes," provide a link to the SEC: <http://www.sec.gov> where this information is located and return form to the ODOT contact shown at the bottom of this form.

Provide link here:

If "no," provide compensation information below.

Names and annual compensation amounts of the five most highly compensated executives:

1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

Business entity contact information (person completing form):

Type name	Title	Date
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Return completed form to: Jeff Flowers, Program and Funding Services Manager; Oregon Department of Transportation; 555 13th Street NE; Salem, OR 97301; Jeffrey.A.FLOWERS@odot.state.or.us

Background on FFATA requirements

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of the Act is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov.

Definition of compensation

Your organization is considered a subrecipient of federal funds. Unless your organization is exempt, FFATA requires you to report total compensation for each of your five most highly compensated executives for the preceding completed year. Total compensation means the cash and non-cash dollar value earned by the executive during the subrecipient's preceding fiscal year and includes the following: salary and bonus; awards of stock, stock options, and stock appropriation rights; earnings for services under non-equity incentive plans; change in pension value; above-market earnings on deferred compensation which is not tax-qualified; and other compensation as defined in 2 CFR Part 170, Section 170.330(b)(5)(vi).

More detailed information about the FFATA can be found at: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>

If you have any questions, contact:

Jeff Flowers
Program and Funding Services Manager
Oregon Department of Transportation
555 13th Street NE
Salem, OR 97301
Jeffrey.A.FLOWERS@odot.state.or.us
Telephone: 503-986-4453