

**COOPERATIVE IMPROVEMENT AGREEMENT  
LOCAL AGENCY CERTIFICATION PROGRAM  
North Rivergate Freight Project**

THIS COOPERATIVE IMPROVEMENT AGREEMENT (“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” or “ODOT”; the CITY OF PORTLAND, acting by and through its elected officials, hereinafter referred to as “CITY”; and the PORT OF PORTLAND, acting by and through its executive director, hereinafter referred to as “Port” (each herein referred to individually as a “Party” and collectively as the “Parties”).

**RECITALS**

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into Cooperative Improvement 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.
2. State and City entered into Local Agency Certification Program Agreement No. 30890, executed on September 18, 2015 (“Local Agency Certification Program Agreement”), incorporated herein and by this reference made a part hereof. 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. The Local Agency Certification Program Agreement also allows a certified agency to perform work on behalf of a non-certified agency. The certified agency is a sub-recipient of federal funds and will be eligible for reimbursement as the delivering agency. The non-certified agency is a third party and is not eligible for federal reimbursement under the Certification Program.
3. North Lombard Street and North Rivergate Boulevard are a part of the City’s street system under the jurisdiction and control of City.
4. City desires to construct the project set forth in this Agreement to alleviate traffic and freight issues along North Rivergate Boulevard.
5. Port was awarded a Transportation Investment Generating Economic Recovery (TIGER) grant for its Portland Marine Terminal Freight And Jobs Access Project to assist in road and intersection improvements to increase connectivity between the Portland Marine Terminal, as defined in the TIGER grant application, and the National Highway System (“TIGER Award”). The TIGER grant will be used as part of the funding for the construction of the project contemplated herein.

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6. City received federal funds from the Metropolitan Planning Organization ("Metro") through Metro's Regional Flexible Funds program.
7. State desires to contribute federal and state dollars to assist in the development of the project set forth herein.

**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. The Parties agree that City shall perform work for Port in accordance with the Local Agency Certification Program Agreement and the terms of this Agreement. Port acknowledges that it is not a Party to the Local Agency Certification Program Agreement and that the Local Agency Certification Program Agreement imposes no obligations and confers no benefits on Port.
2. The Parties agree to City delivering the North Rivergate Freight Project as defined below (the "Project"). The Project includes constructing an overcrossing at North Rivergate Boulevard, constructing associated road, intersection, and multimodal improvements at the intersection of North Lombard Street and North Rivergate Boulevard, and reconstructing North Rivergate Boulevard from North Lombard Street up to North Time Oil Road, as defined in the the 2018-2021 Statewide Transportation Improvement Program (Key #19300) (STIP). The location of the Project is set forth in the map marked Exhibit A, attached hereto and by this reference made a part hereof.
3. The Total Project Cost is estimated at \$22,266,019, which is subject to change. Federal and state funds for this Project are limited to \$11,651,000. Federal TIGER Awards limited to \$7,329,000. Metro Regional Flexible Funding Account ("RFFA") funds are limited to \$3,222,000. State's Bridge Program funds are limited to \$1,100,000. City and Port are responsible for all remaining costs, including the minimum required match for all eligible costs, any non-participating costs, and all costs in excess of the federal or state funds. Any unused federal or state funds will be retained by State and will not be available for use by City for this Agreement or any other projects. "Total Project Cost" means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds. City will report the final cost of each phase of the Project at the completion of each phase, as well as the Total Project Cost at the end of the Project, to the State Local Agency Liaison.
4. City shall design and construct the Project in accordance with the current editions of the "AASHTO LRFD Bridge Design Specifications" and the "AASHTO Guide Specifications for LRFD Seismic Bridge Design," State's Bridge Design and Drafting Manual, State's Hydraulics Manual, and State's Geotechnical Manual.
5. Federal funds under this Agreement are provided under Title 23, United States Code.

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6. City shall comply with the conditions set forth in Exhibit B, attached hereto and by this reference made a part hereof.
7. If State performs work on the Project, State will provide City with a preliminary estimate for the cost of State's work. Prior to the start of each Project phase, State will provide an updated estimate of State's costs from that phase to City. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction. City understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per the Terms of this Agreement. City agrees to reimburse State for work performed for the Project upon receipt of invoice.
8. City shall make all payments for work performed on the Project, including all consultant costs, and invoice State for one hundred percent (100%) of its costs. State shall reimburse City invoices at the pro-rated distribution set forth in paragraph 9. All costs beyond the federal and state reimbursement and any non-participating costs will be the responsibility of the City. 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.
9. State shall reimburse City for eligible expenses according to the following pro-rata distribution:
  - a. For the preliminary design phase of the Project, State shall not reimburse City.
  - b. For the Right-of-Way Phase of the Project, State shall reimburse at 89.73% federal and 10.27% agency share up to the amount of available federal funds programmed in the approved STIP for that phase. City is responsible for all costs in excess of the federal and state funds.
  - c. For the Utility Phase of the Project, State shall reimburse at 89.73% federal and 10.27% agency share up to the amount of available federal funds programmed in the approved STIP for that phase. City is responsible for all costs in excess of the federal and state funds.
  - d. For the Construction Phase of the Project, State shall reimburse at 80% federal and 20% agency share up to the amount of available federal funds programmed in the approved STIP for that phase. City is responsible for all costs in excess of the federal and state funds.
10. Any disputes arising from this Project regarding Port's reimbursement to City for City's payment of invoices identified in the preceding paragraph are to be resolved between Port and City only.
11. City must obtain Port's written approval before submitting any invoice that includes reimbursement requests from the TIGER grant funds awarded to Port, and City must include such written approval with each such invoice sent to State for reimbursement.

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12. City guarantees the availability of City funding in an amount required to fully fund City's share of the Project.
13. Port guarantees the available of Port funding in an amount to fully fund Port's share of the Project.
14. Information required by 2 CFR 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by State to City with the Notice to Proceed.
15. Indirect Cost Rate.
  - a. As required by 2 CFR 200.331(a)(4), the indirect cost rates for this Project at the time the agreement is written is 79.41 percent. This rate may change during the term of this Agreement upon notice to ODOT and ODOT's subsequent written approval.
  - b. If the approved rate changes during the term of this Agreement, City shall invoice ODOT using the current indirect cost rates for the Project on file with ODOT at the time the work is performed. If City does not have approved indirect cost rates on file with ODOT at the time the work is performed, City shall invoice ODOT using a zero percent (0%) rate.
16. City shall perform formal consultant selection, design (excluding bridge design), bridge design, construction contract administration, and shall advertise, bid, award the construction contract.
17. City shall perform the services under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
18. State will submit the requests for federal funding to the FHWA. The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance and scope approved by FHWA will be considered nonparticipating and paid for at City expense.
19. State's Regional Local Agency Liaison or designee will provide City with a written notice to proceed for each phase of the Project when FHWA approval has been secured and funds are available for expenditure on this Project.
20. 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. Port is not considered a subrecipient and is not eligible for federal reimbursement under this Agreement.

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21. 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.
22. 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.
23. State may conduct periodic inspections during the useful life of the Project to verify that Project is being properly maintained and continues to serve the purpose for which federal funds were provided.
24. The useful life of the Project is twenty (20) years for the roadway elements of the Project and seventy five (75) years for bridge elements of the Project.
25. By signing this Agreement, City 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, City received more than 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 1934 or section 6104 of the Internal Revenue Code of 1986, City shall report the total compensation and names of its top five executives to State. City shall report said information to State within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as Exhibit "C".
26. **Americans with Disabilities Act Compliance:**
  - a. **General:** City 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") as identified in paragraph 1 of the General Provisions section of Local Agency Certification Program Agreement.
  - b. **ADA Design Standards, Construction Specifications, and Inspections:** City 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, City agrees to comply with the following:
    - i. For project locations on or along the Oregon State Highway System (state highway), City 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

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- 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. City 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, City 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 City's approved equivalent, City 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 completed 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 City 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, City shall complete and keep on file an ODOT- and FHWA-approved ADA curb ramp inspection form (or other approved document) to show that each Project curb ramp meets City's curb ramp standards and is ADA compliant or conforms to City's approved ADA design exception.
- d. **State inspection:** City shall promptly notify State of Project completion and allow State to inspect Project sidewalks, curb ramps, 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 state highway prior to acceptance of Project by City and prior to release of any City contractor.
- e. **Work Zone Access:** City shall ensure that temporary pedestrian routes are provided through or around any Project work zone in accordance with the applicable ODOT or City 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

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accessibility features equal to or better than the features present in the existing pedestrian facility. City 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.

- f. **Reimbursement:** Unless City has an approved design exception, State will only reimburse City for work that meets the applicable ODOT or City standards as set forth in subsections (a) through (c) above, regardless of whether the work is on a State-owned or an City-owned facility.
  - g. **On-going Maintenance Obligation:** City shall ensure that any portions of the Project under City'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 City 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 work on the 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.
27. City 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. City shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
28. City 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

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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 ("Claims"), to the extent such Claims are caused, or alleged to be caused, by the negligent or willful acts or omissions of City'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.

29. Any such indemnification shall also provide that neither City's contractor and subcontractor nor any attorney engaged by City'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 City's contractor is prohibited from defending the State of Oregon, or that City'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 City's contractor if the State of Oregon elects to assume its own defense.
30. This Agreement may be terminated by mutual written consent of all Parties.
31. State may terminate this Agreement effective upon delivery of written notice to City and Port, 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.



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- 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.
32. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  33. 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.
  34. 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 shall 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.
  35. City grants State the right to enter onto City right of way for the performance of duties as set forth in this Agreement.
  36. Each Party certifies and represents that each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of the respective Party, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind that Party.
  37. 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.
  38. This Agreement and the Local Agency Certification Program Agreement, as amended, and all attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by City to State. 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

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provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.

39. State's Bridge STIP Coordinator is Rachelle Nelson, ODOT Bridge Section, 4040 Fairview Industrial Drive SE, MS#4, Salem, OR, 97302, (503) 986-4188, rachelle.l.nelson@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

40. State's Regional Local Agency Liaison for the Agreement is Justin Bernt, Region 1 Local Agency Liaison, 123 NW Flanders Street, Portland, OR 97209, (503) 731-3016, justin.j.bernt@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

41. City's Project Liaison for this Agreement is Dan Layden, Capital Program Manager, 1120 SW Fifth Avenue, Suite 800, Portland, OR 97204, (503) 823-2804, dan.layden@portlandoregon.gov, or assigned designee upon individual's absence. City shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

42. Port's Project Liaison for this Agreement is Phil Healy, Senior Transportation Planner, 7200 NE Airport Way, Portland, OR 97208, (503) 415-6512, philip.healy@portofportland.com, or assigned designee upon individual's absence. Port shall notify the other Parties 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 2018-2021 Statewide Transportation Improvement Program (STIP), (Key #19300) 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**, acting by and through its elected officials

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

By \_\_\_\_\_

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

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM**

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Legal Counsel

By \_\_\_\_\_  
Certification Program Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

**City Contact:**

Dan Layden, Capital Program Manager  
1120 SW Fifth Avenue, Suite 800  
Portland, OR 97204  
503.823.2804  
dan.layden@portlandoregon.gov

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

Date \_\_\_\_\_

**PORT OF PORTLAND**, acting by and through its executive director

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_

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

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY FOR THE PORT**

**State Contact:**

Justin Bernt, Region 1 Local Agency Liaison  
123 NW Flanders Street  
Portland, OR 97209  
503.731.3016  
justin.j.bernt@odot.state.or.us

By \_\_\_\_\_  
Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**

Phil Healy, Senior Transportation Planner  
7200 NE Airport Way  
Portland, OR 97208  
503.415.6512  
philip.healy@portofportland.com

**Exhibit A – Project Location Map**

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## EXHIBIT B

### Project Cost Estimate, Progress Reports and Project Change Request Process

1. **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**

|   | <b>Milestone Description</b>  | <b>Completion Date</b> |
|---|---|------------------------|
| 1 | Obligation (Federal Authorization) of Federal funds for the Utility phase of the Project      | 5/31/18                |
| 2 | Obligation (Federal Authorization) of Federal Funds for the Right of Way phase of the Project | 5/31/18                |
| 3 | Obligation (Federal Authorization) of Federal for the Construction phase of the Project       | 5/31/19                |

2. **Project Change Request (PCR) Process** - Agency must obtain approval from State's Contact for changes to the Project's scope, schedule, or budget as specified in paragraphs 2a, 2b, and 2c, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget made prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.
  - a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in paragraph 1 of the Agreement.
  - b. **Schedule** – A PCR is required if Agency or State's Contact anticipates 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** – Total Project Cost and approved funds for the Project are controlled by Terms of Agreement paragraph 2 of this Agreement.
3. **PCR Form** - Agency must submit all change requests using State's PCR Form. State's Project Liaison shall provide Agency with the PCR Form. 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 Project Change Request may be rejected at State's discretion.

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4. **Consequence of Non-Performance** - If Agency fails to fulfill its obligations under this Exhibit, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default includes: (a) restricting Agency consideration for future funds awarded through State's managed funding programs, (b) withdrawing unused Project funds, and (c) terminating this Agreement as set forth in Terms of Agreement, Paragraph 28. State may also choose to bill Agency for expenses incurred by State for staff time to assist in completion of the final project documentation and issuance of Third Notification or City equivalent.

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