

Misc. Contracts and Agreements No. 31201
Cross Ref. Master Certification Agreement No. 30890

AMENDMENT NUMBER 02
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 31201
SURFACE TRANSPORTATION PROGRAM - URBAN
NE Columbia Blvd at MLK Jr Blvd

This is Amendment No. 02 to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," or "ODOT," and **CITY OF PORTLAND**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into on November 21, 2016, and Amendment Number 01, entered into on August 4, 2017.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the Project Milestone #3, Obligation (Federal Authorization) of Federal Funds for the Construction phase of the Project, update ADA language and the indirect cost rate.

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.**

Exhibit B, Section 6, Project Milestones, Page 12, which reads:

6. Project Milestones: The Parties agree that the dates set forth in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement after obtaining an approved Project Change Request.

Table 1: Project Milestones

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of Federal funds for the Preliminary Engineering phase of the Project	Completed
2	Obligation (Federal Authorization) of Federal Funds for the Right of Way phase of the Project	Completed
3	Obligation (Federal Authorization) of Federal Funds for the Construction phase of the Project	6/15/17

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

6. Project Milestones: The Parties agree that the dates set forth 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	Completion Date
1	Obligation (Federal Authorization) of Federal funds for the Preliminary Engineering phase of the Project	Completed
2	Obligation (Federal Authorization) of Federal Funds for the Right of Way phase of the Project	Completed
3	Obligation (Federal Authorization) of Federal Funds for the Construction phase of the Project	6/30/18

Exhibit B, Section 8, Project Milestones, Page 13, which reads:

8. **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 (“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:** 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, and pedestrian-activated signals, **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

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and approval process, and inspection documentation process, as approved by State and/or 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 (or other approved document) 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. **Reimbursement:** State will not reimburse Agency for work that does not meet the applicable ODOT or Agency standards set forth in subsections (a) through (c) above without an approved design exception regardless of whether the work is on a State-owned or Agency-owned facility.
- e. **On-going Maintenance and Inspection Obligation:** Agency shall, at its own expense, maintain and periodically inspect any Project sidewalks, curb ramps, and pedestrian-activated signals on portions of the Project **under Agency's maintenance jurisdiction** upon Project completion and throughout the useful life of the Project to ensure continuing compliance with the ADA. This provision shall survive termination of the Agreement.

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

8. **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") as identified in paragraph 1 of the General Provisions section of the 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

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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, and pedestrian-activated signals, 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 or along 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 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 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 Agency's ODOT- and FHWA-approved ADA curb ramp inspection form (or other approved document) 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.

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- d. **State inspection:** Agency shall promptly notify State of Project completion and allow State to inspect Project sidewalks, curb ramps, and pedestrian-activated signals, 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.
- f. **Reimbursement:** Unless Agency has an approved design exception, State will only reimburse Agency for work that meets the applicable ODOT or Agency standards as set forth in subsections (a) through (c) above, regardless of whether the work is on a State-owned or an 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.

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TERMS OF AGREEMENT, No. 5, Page 2, which reads:

5. Indirect Cost Rate:

- a. 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 State shall provide to Agency with the written notice to proceed.
- b. The indirect cost rate for the Project at the time this Agreement is executed is seventy-nine and twenty-seven one hundredths percent (79.27%). The indirect cost rate may change upon notice to State and State's subsequent written approval.

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

5. 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 Agency with the Notice to Proceed.
6. Indirect Cost Rate.
 - a. As required by 2 CFR 200.331(a)(4), the indirect cost rate(s) for this project at the time the agreement is written seventy-six and seven hundredths percent (76.07%). 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(s) change(s) during the term of this Agreement, Agency 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 Agency does not have approved indirect cost rate(s) on file with ODOT at the time the work is performed, Agency shall invoice ODOT using a zero percent (0%) rate.
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.

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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, (Key #13502) 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)

By _____
Agency Counsel

Date _____

Agency Contact:

Winston Sandino
Project Manager
1120 SW 5th Avenue, Room 800
Portland, OR 97204
(503) 823-5767
winston.sandino@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 _____
Interim State Traffic Roadway Engineer

Date _____

By _____
Region 1 Manager

Date _____

By per email Bonnie Heitsch
Assistant Attorney General

Date per email 1/12/18

State Contact:

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