

AMENDMENT NUMBER 03
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 28038
Red Electric Trail: SW Bertha to SW Capitol Highway
City of Portland

This is Amendment Number 03 to the Agreement 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." State and Agency entered into the Agreement on November 8, 2011, Amendment Number 01 on October 22, 2013, and Amendment Number 02 on October 27, 2015.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to add federal and local funding; to add necessary language relating to the Americans with Disabilities Act, the Federal Funding Accountability and Transparency Act, and the Cargo Preference Act; and to update references to Local Agency Certification Program Agreement 30890.

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.**
 - A. **The Agreement title is revised to read "Red Electric Trail: SW Bertha to SW Capitol Highway."**
 - B. **Exhibit A is deleted in its entirety and replaced with the attached Revised Exhibit A. All references to "Exhibit A" are hereafter references to "Revised Exhibit A."**
 - C. **Exhibit B is deleted in its entirety and is replaced with the attached Revised Exhibit B. All references to "Exhibit B" are hereafter references to "Revised Exhibit B."**
 - D. **RECITALS, Paragraph 1, Page 1, which reads:**
 1. By the authority granted in Local Agency Certification Program Agreement No. 26586 incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with City for the performance of work on this improvement Project. The certification Program allows State to certify a Local Agency's procedures and delegates authority to the certified Local Agency to administer federal-aid projects that are not on the National Highway System.

Is deleted in its entirety and replaced with the following:

1. By the authority granted in Local Agency Certification Program Agreement No. 30890, incorporated herein and by this reference made a part hereof,

State may enter into this Supplemental Project Agreement with City for the performance of work on this improvement Project. The Certification Program allows State to certify a Local Agency's procedures and delegate authority to the certified Local Agency to administer federal-aid projects.

E. TERMS OF AGREEMENT, Paragraph 2, Page 1, which reads:

2. The total estimated cost of the Project is \$2,887,000, which is subject to change.

Is deleted in its entirety and replaced with the following:

2. Federal funds under this Agreement are provided under Title 23, United States Code.

F. TERMS OF AGREEMENT, Paragraph 4, Page 2, which reads:

4. This Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code and the Surface Transportation Program (STP) also under Title 23, United States Code. The CMAQ funds are limited to \$1,748,823, with City providing the match and non-participating costs, including all costs in excess of the available federal funds. The STP Urban funds are limited to \$180,360 with City providing the match. City shall be responsible for determining the amount of federal funds to be applied to each phase of the Project. City is not guaranteed the use of unspent funds for a particular phase of work. City must notify State and obtain concurrence in advance of State obligating the funds for any phase of the Project if City wants State to release funds on the current authorized phase(s) of work and reprogram those funds for use in a later phase of work.

Is deleted in its entirety and replaced with the following:

4. The Total Project Cost is estimated at \$4,136,292, which is subject to change. Federal funds for this Project are limited to \$2,132,213. City is responsible for all remaining costs, including the 10.27 percent 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's Local Agency Liaison.

G. TERMS OF AGREEMENT, Paragraph 10, Page 2, which reads:

10. Local Agency Certification Program Agreement No. 26586 was fully executed on September 6, 2012.

Is deleted in its entirety and replaced with the following:

10. Local Agency Certification Program Agreement No. 30890 was fully executed on September 18, 2015.

H. TERMS OF AGREEMENT, Paragraph 19, Page 4, which reads:

19. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 26586, and all attached exhibit constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

Is deleted in its entirety and replaced with the following:

19. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 30890, and all attached exhibit 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.

I. TERMS OF AGREEMENT, Paragraph 20 through 21, which read:

20. State's Project Liaison for this Agreement is Reem Khaki, 123 NW Flanders Street, Portland, OR 97209, 503-731-8501, reem.d.khaki@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.

21. City's Project Liaison for this Agreement is Elizabeth Mahon, PBOT, 1120 SW 5th Avenue, Room 800, Portland, OR 97204, 503-823-0396,

elizabeth.mahon@portlandoregon.gov, or assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

Are deleted in their entirety and replaced with the following:

20. State's Project Liaison for this Agreement is Justin Bernt, 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 Party in writing of any contact information changes during the term of this Agreement.

21. City's Project Liaison for this Agreement is Nicole Peirce, 1120 SW 5th Avenue, Room 800, Portland, OR 97204, 503-823-6186, nicole.peirce@portlandoregon.gov, or assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

J. Insert new TERMS OF AGREEMENT, Paragraphs 22 through 27, to read as follows:

22. 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 is 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 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.

23. 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".

24. 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.

25. **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 (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:** 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, shared use path, 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. 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 or along 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 City's 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, shared use path, and pedestrian-activated signals, as applicable to the Project, located on or along the a 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 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, City ensuring that:

 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by City identifying sidewalk, curb ramp, shared use path, 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 City 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.
- 26. 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 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 from the negligent or willful acts or omissions of State, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.
- 27. 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 any time 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

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. Recipient 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.

Signature Page to Follow

THE PARTIES, by execution of this Amendment, hereby acknowledge that their signing representatives have read this Amendment, 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 #17268) that was adopted by the Oregon Transportation Commission on July 20, 017 (or subsequently by amendment to the STIP).

City of Portland, by and through its elected officials

By _____

Date _____

APPROVED AS TO FORM

By _____

Agency Counsel

Date _____

Agency Contact:

Nicole Peirce, Project Manager
1120 SW 5th Avenue, Suite 800
Portland, OR 97204
(503) 823-6186
nicole.peirce@portlandoregon.gov

State Contact:

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

STATE OF OREGON, by and through its Department of Transportation

By _____

Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____

Active Transportation Section Manager

Date _____

By _____

Region 1 Manager

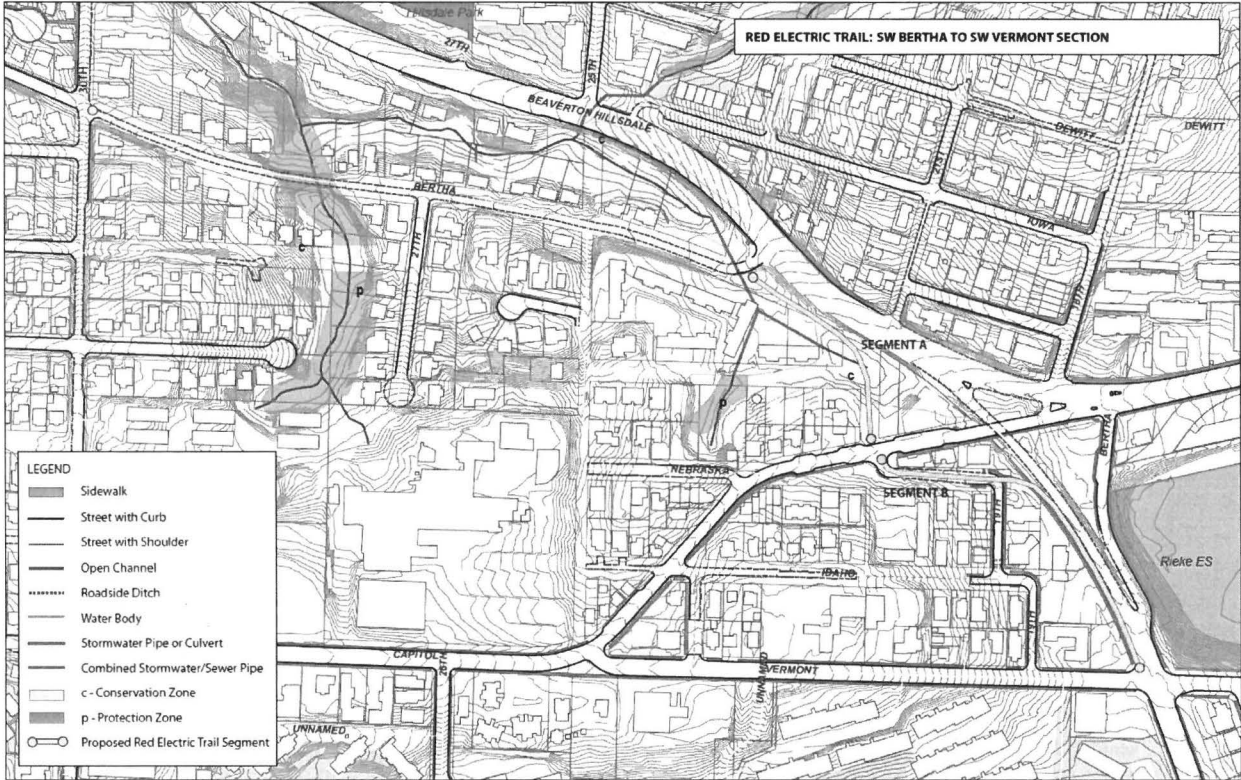
Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Bonnie Heitsch via email dated 7/19/18

Revised EXHIBIT A
Project Map
28038-03
Red Electric Trail: SW Bertha to SW Vermont Section

189125



*The Project consists only of Segment A. Segment B is no longer a part of the Project.

Revised EXHIBIT B

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

28038-03

Key 17268

Red Electric Trail: SW Bertha to SW Vermont Section

1. Project Description

The City will provide pedestrian and cyclist on-street and off-street trail connections from Bertha Boulevard near its intersection Beaverton-Hillsdale Highway to SW Capitol Highway. City will design and construct an off-street trail from an existing crossing of SW Capitol Highway to the north and west, where it will intersect with SW Bertha Boulevard near an existing intersection SW Beaverton-Hillsdale Highway. There are no existing facilities. This segment will require a structure in the middle to cross a ravine in the public right of way.

2. This Project is subject to progress reporting and project change process as stated below.
3. **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

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of Federal funds for the Preliminary Engineering phase of Project	09/02/2011
2	Obligation (Federal Authorization) of Federal for the Construction phase of Project	08/30/2018

4. **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 6a, 6b and 6c, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

- a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).
 - b. **Schedule** – A PCR is required if Agency or State’s Contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
 - c. **Budget** – Total Project Cost and approved funds for the Project are controlled by Terms of Agreement paragraph 2 of this Agreement.
5. **PCR Form** - Agency must submit all change requests using PCR Form 734-2863, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to 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 the discretion State’s CMAQ Program Manager.

The fillable PCR form and its instructions are available at the following web site:
http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

6. **Consequence for Non-Performance** - If Agency fails to fulfill its obligations in paragraphs No. 3 through No. 7 above, 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 may include: (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 stated in Terms of Agreement, Paragraph No. 15a and 15b.

Exhibit C

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 \$25,000,000. 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