

## Exhibit A

Misc. Contracts and Agreements  
No. 33113

GRANT AGREEMENT  
SAFE ROUTES TO SCHOOL PROGRAM (SRTS)  
OREGON DEPARTMENT OF TRANSPORTATION  
Project Name SE 174th: Sidewalk Infill from SE Stark to SE Main  
(Oregon Governmental Entity)

This Agreement is made and entered into between the **State of Oregon**, acting by and through its Department of Transportation, ("ODOT"), and **City of Portland, Bureau of Transportation**, acting by and through its Governing Body, ("Recipient"), both referred to in this Agreement individually as "Party" and collectively as "Parties."

**Agreement Documents.** This Agreement consists of this document and the following documents:

- a. Exhibit A: **Project Description, Key Milestones, Schedule and Budget**
- b. Exhibit B: **Recipient Requirements**
- c. Exhibit C: **Subcontractor Insurance**
- d. Exhibit D: **Application and documents provided by Recipient to ODOT before execution of the Agreement**

Exhibits A through D are incorporated by reference into this Agreement. Exhibits A through C are attached. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C; Exhibit D.

**BACKGROUND**

1. The State of Oregon has established the Safe Routes to Schools Fund (the "SRTS Fund") and the Safe Routes to School Program (the "Program") pursuant to ORS 184.740 *et seq.*
2. The purpose of the Program is to assist Oregon communities in identifying and reducing barriers and hazards to children walking or bicycling to and from school.
3. Moneys in the SRTS Fund are continuously appropriated to ODOT to implement the Program and provide certain matching grants for safety improvement projects near schools.
4. Recipient applied for a grant through the Program to undertake the project described in Exhibit A, attached and incorporated by this reference (the "Project").
5. ODOT approved a grant in the maximum amount of **\$2,000,000** and is willing to provide the grant to Recipient for the Project on the terms and conditions of this Agreement.
6. Recipient desires to receive the grant on the terms and condition of this Agreement,
7. ODOT and Recipient desire to enter into this Agreement to implement the grant.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

## AGREEMENT

**1. Effective Date and Availability of Grant Funds.** This Agreement is effective on the date that it is fully executed and approved as required by applicable law (the "Effective Date"). The availability of Grant Funds (as defined in section 2) and ODOT's obligation to disburse Grant Funds shall end on the earlier of the following dates (the "Availability Termination Date"):

- (i) Five (5) years after the Effective Date; or
- (ii) 45 days after the Final Payment Conditions are satisfied pursuant to section 6.a.

No Grant Funds are available after the Availability Termination Date.

**2. Grant.** In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient with a maximum of **\$2,000,000** (the "Grant Funds") from the SRTS Fund to support and assist Recipient's implementation of the Project.

**3. Estimated Project Cost, Scope and Schedule; Recipient Match.** The total Project cost is estimated at \$2,522,000, which is subject to change. The Project's scope and schedule are set forth in Exhibit A. While the total Project cost may change, ODOT will reimburse Eligible Costs (as that term is defined in section 4.b) only up to the maximum Grant Funds amount stated in section 2. ODOT's reimbursement of Eligible Costs under section 6.a. is subject to, and calculated based upon, Recipient's cash match requirement as set forth in paragraph 5 of Exhibit B ("Recipient's Cash Match"). Recipient will be responsible for all Project costs, whether Eligible Costs or otherwise, not covered by the Grant Funds.

#### **4. Project:**

**a. Use of Grant Funds.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by ODOT by amendment pursuant to Section 11.c.

#### **b. Eligible Costs.**

Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement ("Eligible Costs").

i. Eligible Costs are actual costs of Recipient to the extent those costs are:

- (A) reasonable, necessary and directly used to develop and construct the Project;
- (B) permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by ODOT;
- (C) incurred no earlier than 24 months before the application deadline for this grant; and
- (D) eligible or permitted uses of the Grant Funds under the Oregon Constitution Article IX Section 3a, the statutes and laws of the state of Oregon, and this Agreement.

ii. Eligible costs do NOT include:

- (A) operating and working capital or operating expenditures charged to the Project by Recipient or payments made to related parties;
- (B) loans or grants to be made to third parties;
- (C) any expenditures incurred after this Agreement's termination or expiration; or
- (D) costs associated with a Project that substantially deviate from the Application submission, identified in Exhibit D, unless such changes are approved by ODOT by amendment of this Agreement.

**c. Project Change Procedures.**

- i. If Recipient anticipates a change in the Project's scope or the Project's completion date identified in Exhibit A (the "Project Completion Date"), Recipient shall submit a request for change to SRTSPProgramMailbox@odot.state.or.us. The request for change must be submitted before the change occurs.
- ii. Recipient shall not proceed with any changes to the Project's scope or the Project Completion Date without first executing an amendment to this Agreement that documents ODOT's approval of Recipient's request for such a change. A request for a change in the Project's scope or the Project Completion Date may be rejected at ODOT's sole discretion.

**5. Progress Reports.**

- a. **Quarterly Reports.** Recipient shall submit quarterly progress reports to ODOT using a format that ODOT provides. Recipient must submit the reports to SRTSPProgramMailbox@odot.state.or.us by the first Wednesday of March, June, September, and December.
- b. **Final Report.** Recipient shall submit a final written report (the "Final Report") to SRTSPProgramMailbox@odot.state.or.us that identifies how hazards have been reduced to children walking or bicycling to and from school as a direct result of this Project. Recipient must submit the Final Report within six (6) months after the Project Completion Date. Recipient's obligation to provide the Final Report will survive this Agreement's expiration or termination.

**6. Reimbursement Process for Eligible Costs.**

- a. In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient Grant Funds in an amount not to exceed (i) \$2,000,000 or (ii) 79.3% of Eligible Costs (the "Reimbursement Rate"), whichever is less. ODOT shall reimburse Eligible Costs at the Reimbursement Rate within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient. Recipient must pay its contractors, consultants and vendors before submitting invoices to ODOT for reimbursement. Recipient must submit to ODOT its first invoice within two (2) years of the Effective Date and must submit its final invoice (the "Final Invoice") within six (6) months of the Project Completion Date. Upon ODOT's receipt of the Final Invoice, ODOT will conduct a final on-site review of the Project. ODOT will withhold payment of the Final Invoice until both (i) its SRTS Program Manager, or designee, has completed the final inspection and accepted the Project as complete and (ii) Recipient has submitted the Final Report required by section 5.b (collectively, the "Final Payment Conditions").



- b. Recipient shall present monthly invoices for the Eligible Costs directly to SRTSProgramMailbox@odot.state.or.us for review and approval. Such invoices shall include the Agreement number, invoice number, total Grant Funds amount, total amount of previously reimbursed invoices, the start and end date of billing period, and itemize all expenses for which reimbursement is claimed. Invoices shall include supporting documentation, e.g., labor hours should be supported by timesheets/work logs, proof of payment to vendors (if applicable), receipts, etc. Invoices must be based on actual expenses incurred and clearly specify the percentage of Project completion. Invoices shall not be presented for period of less than one month. Recipient shall also include with the invoice a summary describing the work invoiced for the period being invoiced and work expected for the next invoicing period.
- c. **Conditions Precedent to Reimbursement of Eligible Costs.** ODOT's obligation to reimburse Recipient for Eligible Costs is subject to satisfaction, with respect to each reimbursement, of each of the following conditions precedent:
  - i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the reimbursement;
  - ii. Recipient is in compliance with the terms of this Agreement;
  - iii. Recipient's representations and warranties set forth in Section 7 below are true and correct on the date of reimbursement with the same effect as though made on the date of the request for the reimbursement, and
  - iv. Recipient has provided to ODOT a request for reimbursement in accordance with Section 6.b.
- d. **Recovery of Funds.** Any funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement, including falsifying information contained in the application, ("Misexpended Funds") must be returned to ODOT. Overstatement of the match requirement in the application is a violation of this Agreement. Recipient shall return all Misexpended Funds to ODOT promptly after ODOT's written demand and no later than fifteen (15) days after ODOT's written demand. If Recipient fails to reimburse ODOT, ODOT may withhold Recipient's proportional share of State Highway Fund distribution necessary to reimburse ODOT for costs incurred by such Recipient breach. Recipient shall pay back all of the funds to ODOT if Project is not completed or if funds are Misexpended.

**7. Representations and Warranties of Recipient.** Recipient represents and warrants to ODOT as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or



supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any of its benefits.
- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including, without limitation, any relevant criminal indictments or convictions.
- e. **Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.
- f. The warranties set forth in this Section 7 are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

#### 8. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon ("Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT or the Secretary to perform site reviews of the Project, and to examine all real property and facilities purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a period of six (6) years after final payment. Recipient should consult with the State of Oregon before final destruction of Project records. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.

c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

d. **Survival.** This Section 8 shall survive any expiration or termination of this Agreement.

## 9. Recipient Subagreements and Procurements

a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.

- i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
- ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third party beneficiary of Recipient's subagreement with the Contractor and to name ODOT as an additional obligee on contractors' bonds.
- iii. Recipient agrees to provide ODOT with a copy of any signed subagreement upon ODOT's request. Recipient must report to ODOT any substantial breach of a term or condition of a subagreement relating to this Agreement within ten (10) days of Recipient discovering the breach.

b. **Subagreement indemnity; insurance.**

- i. *Recipient shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in Oregon Revised Statute (ORS) 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, the 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 Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that ODOT shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of ODOT, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.*
- ii. Any such indemnification shall also provide that neither Recipient's contractor or subcontractor, nor any attorney engaged by Recipient's contractor or 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 Recipient's contractor is prohibited from defending the State of Oregon, or that Recipient'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.

Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Recipient's contractor if the State of Oregon elects to assume its own defense.

iii. Recipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

**c. Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules, ensuring that:

- i. all applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement;
- ii. all procurement transactions are conducted in a manner providing full and open competition; and
- iii. procurements exclude the use of statutorily or administratively imposed in-state or geographic preference in the evaluation of bids or proposals (with exception of locally controlled licensing requirements).

## 10. Termination

**a. Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, if:

- i. Recipient fails to perform the Project within the time specified in this Agreement or any extension of the Agreement or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
- ii. ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
- iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
- iv. The Project would not produce results commensurate with the further expenditure of funds; or
- v. Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required the approval of ODOT.

**b. Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to ODOT, or at such later date as may be established by Recipient in such written notice, if:

- i. The requisite local funding to continue the Project becomes unavailable to Recipient;



- ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- iii. ODOT fails to make payments due in accordance with this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.
- d. **Rights upon Termination; Remedies.** Any termination of this Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

## 11. GENERAL PROVISIONS

### a. Contribution.

- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- ii. With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.
- iii. With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall

be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- d. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- e. **No Third Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name in this Agreement and expressly described as an intended beneficiary of the terms of this Agreement.
- f. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties or notices to be given under this Agreement shall be given in writing by personal delivery, facsimile, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.f. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- g. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party consents to the exclusive jurisdiction of the Circuit Court of Marion County in the State of Oregon court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- h. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- i. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- j. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be 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 this Agreement did not contain the particular term or provision held to be invalid.
- l. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- m. Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the Agreement's subject matter. There are no other understandings, agreements, or representations, oral or written, not specified in this Agreement regarding its subject matter. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.



ODOT/Recipient  
Agreement No. 33113

**THE PARTIES**, by executing this Agreement, acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The Oregon Transportation Commission at its January 17, 2019 meeting approved the Safe Routes to School project application list and directed the Transportation Development Division Administrator to enter into project agreements.

City of Portland, Bureau of Transportation, by  
and through its Governing Body

By \_\_\_\_\_  
(Legally designated representative)

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL (If required  
in Recipient's process)**

By \_\_\_\_\_  
Recipient's Legal Counsel

Date \_\_\_\_\_

**Recipient Contact:**

Dana Dickman, Traffic Safety Section Manager  
1001 SW 5th Ave, Floor 4  
Portland, OR 97204  
503-823-5785  
dana.dickman@portlandoregon.gov

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

By \_\_\_\_\_  
Transportation Development Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
SRTS Program Manager

Date \_\_\_\_\_

BY \_\_\_\_\_  
State Traffic-Roadway Engineer

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**  
(For funding over \$150,000)

By Sam Zeigler via email dated 1/26/19  
Assistant Attorney General

**SRTS Program Manager:**

LeeAnne Fergason  
555 13<sup>th</sup> Street NE  
Salem, OR 97301-4178  
Phone: 503-986-5805  
Leeanne.fergason@odot.state.or.us

**EXHIBIT A**  
**Project Description, Key Milestones, Schedule and Budget**

**Agreement No. 33113**

**Application Number: 11-98**

**Project Name: SE 174th: Sidewalk Infill from SE Stark to SE Main**

**A. PROJECT DESCRIPTION**

The project will complete sidewalk construction on the west side of SE 174th between SE Stark and SE Main Streets. The project may include marked crosswalks based on city crossing spacing guidelines.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, #10.

**B. PROJECT KEY MILESTONES AND SCHEDULE**

The Project has six (6) Key Milestone(s). Key Milestones are used for evaluating performance on the Project as described in the Agreement. Neither Key Milestone 1, Scoping and planning, nor Key Milestone 6, Project completion, can be changed without an amendment to the Agreement.

If Recipient anticipates either that Key Milestone 1 will require material changes or that Key Milestone 6 will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order, as described in Section 4(c) of the Agreement, to SRTSProgramMailbox@odot.state.or.us as soon as Recipient becomes aware of any possible change or delay. Recipient must submit the Request for Change Order before materially changing the project scope (Key Milestone 1) or delaying the Project completion more than 90 days (Key Milestone 6), as the case may be. Adjustments to all milestone dates must be noted in the quarterly reports.

**Table 1: Key Milestones**

<b>Key Milestone</b>	<b>Description</b>	<b>Estimated Due Date</b>
<b>1</b>	<b>Scoping and planning</b>	12 weeks from Agreement Execution
<b>2</b>	<b>Community Outreach</b>	16 weeks from Agreement Execution
<b>3</b>	<b>Right of way and land acquisition</b>	N/A
<b>4</b>	<b>Permits</b>	N/A
<b>5</b>	<b>Final plans/bidding engineering documents</b>	24 weeks from Agreement Execution
<b>6</b>	<b>Construction contract award</b>	32 weeks from Agreement Execution

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Agreement No. 33113

7	Utilities Relocation	N/A
8	Project completion (Project must be completed within 5 years of agreement execution.)	3/27/2020

**Table 2 – Funding Breakdown**

1	TOTAL PROJECT COST	\$2,522,000
2	RECIPIENT'S CASH MATCH (minimum 20% of Total Project Cost and any portion of the Project which is not covered by SRTS Grant Funds. \$0 in prior expenditures are included in Recipient's Cash Match.)	\$522,000 (20.7%)
3	SRTS GRANT FUNDS	\$2,000,000



**EXHIBIT B**  
**Recipient Requirements**

1. Recipient shall comply with all applicable requirements of ORS 184.740 to 184.742 and Oregon Administrative Rule (OAR) 737-025-0010 through 737-025-0093.
2. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
3. Recipient acknowledges and agrees that, whenever OAR 839-025-0230(4) requires ODOT as the public agency providing public funds for a project that is a public work under ORS 279C.800(6)(a)(B) to pay the fee required under ORS 279C.825, ODOT will calculate and pay the fee and deduct the amount of the fee from Recipient's Grant Funds under this Agreement.
4. Recipient shall notify ODOT's SRTS Program Manager in writing when any contact information changes during the term of this Agreement.
5. Recipient must provide a "cash match," as that term is defined in OAR 737-025-0010, in an amount equal to 2620.7% of the Eligible Costs. ODOT will reimburse Recipient pursuant to section 6.a of the Agreement. Recipient is responsible for all Project costs, whether Eligible Costs or otherwise, in excess of the Grant Funds.
6. Recipient shall pay back all of the Grant Funds to ODOT if Project is not completed in accordance with, or consistent with Exhibit A and Exhibit D, as each may be amended. Recipient obligations for Recovery of Grant Funds are provided in Section 6.d of this Agreement.
7. Recipient and ODOT's SRTS Program Manager, or designee, shall, upon completion of all on-site work for the Project, perform a final on-site review. Once the review is completed, the ODOT SRTS Program Manager may recommend acceptance of the Project by providing written documentation affirming that the Project is complete.
8. Recipient shall, at its own expense, maintain and operate Project upon completion and throughout the useful life of Project at a minimum level that is consistent with normal depreciation or service demand or both. ODOT and Recipient agree that the useful life of Project is defined as twenty (20) years. Recipient has, by submitting its application for this grant, represented and certified to sufficient funds and to its ability to operate and maintain Project. Recipient may not transfer, convey, sell or lease the property and assets of the Project during the useful life of the Project without the prior written approval of ODOT. Such approval shall not be unreasonably withheld. Recipient agrees to require any successor owner of the Project property to comply with this requirement. Failure to comply with this requirement may be remedied by Recipient or its successor in interest by (a) restoring the property to the uses(s) required by this Agreement or (b) repaying expended funds. In the event repaying expended funds is required, the amount determined using the Straight Line Depreciation (SLD) method must be repaid to ODOT. The SLD is calculated by taking the grant amount divided by twenty years. ODOT may conduct site reviews of the Project as provided in Section 8.a of this Agreement throughout the useful life of the Project. This paragraph shall survive any expiration or termination of this Agreement.

9. Recipient shall provide pre-construction Project photographs within thirty (30) days of the execution of this Agreement. Recipient shall provide Project photographs thirty (30) days after Project is completed.

10. **Americans with Disabilities Act Compliance:**

a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):

- i. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
- ii. Recipient shall follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
- iii. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

**<http://www.oregon.gov/ODOT/CONSTRUCTION/Pages/Forms.aspx>**

- iv. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.
- v. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction, to the greatest extent possible.

b. **Local Roads:** For portions of the Project located on **Recipient** roads or facilities that are not on or along a state highway:

- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
- ii. Recipient may follow its own processes or may use ODOT's processes 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, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<http://www.oregon.gov/ODOT/CONSTRUCTION/Pages/Forms.aspx>;

Additional ODOT resources are available at:

<http://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

ODOT has made its forms, processes, and resources available for Recipient's use and convenience.

- iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
  - iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. 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 route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction, to the greatest extent possible.
- c. Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:
- i. Pedestrian access is maintained as required by the ADA,
  - ii. Any complaints received by Recipient 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 Recipient 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.
- d. Maintenance obligations in this section shall survive termination of this Agreement.

## 11. Additional requirements

**General Standards.** The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.



**EXHIBIT C**  
**Subcontractor Insurance Requirements**

**GENERAL.**

Recipient shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Recipient and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Recipient. Recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Recipient permit a contractor to work under a Subcontract when the Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the Recipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

**TYPES AND AMOUNTS.**

1. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.
2. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to ODOT. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by ODOT:

Bodily Injury, Death and Property Damage:

Not less than \$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence). Annual aggregate limit shall not be less than \$4,000,000.

3. **AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.** Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by ODOT:

Bodily Injury, Death and Property Damage:

Not less than \$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

4. **ADDITIONAL INSURED.** The Commercial General Liability Insurance and Automobile Liability insurance must include the State of Oregon, ODOT, its officers, employees and agents as Additional Insureds, but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
5. **"TAIL" COVERAGE.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Sponsor's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
6. **NOTICE OF CANCELLATION OR CHANGE.** The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). Any failure to comply with the reporting provisions of this clause shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement.
7. **CERTIFICATE(S) OF INSURANCE.** Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees) and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. Required insurance coverages shall be obtained from insurance companies acceptable to ODOT and the contractor shall pay for all deductibles, self-insured retention or self-insurance.
8. **INSURANCE REQUIREMENT REVIEW.** Recipient agrees to periodic review of insurance requirements by ODOT under this Agreement and to provide updated requirements as mutually agreed upon by ODOT and Recipient.
9. **ODOT ACCEPTANCE.** All insurance providers are subject to ODOT acceptance. If requested by ODOT, Recipient shall provide complete copies of its Contractors' insurance policies, endorsements, self-insurance documents and related insurance documents to ODOT's representatives responsible for verification of the insurance coverages required under this Exhibit C.

**The Recipient shall immediately notify ODOT of any change in insurance coverage.**