

## Exhibit A

Misc. Contracts and Agreements  
No. 33098

GRANT AGREEMENT  
OREGON DEPARTMENT OF TRANSPORTATION  
*Chapter 748, 2017 Oregon Laws (SB 5530)*  
**SW Capitol Highway: Multnomah Village to West Portland**  
(City of Portland)

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and City of Portland, acting by and through its elected officials, hereinafter referred to as "Recipient," both hereinafter referred to individually or collectively as "Party" or "Parties."

- 1. Effective Date.** This Agreement shall become effective on the date that it is fully executed and approved as required by applicable law (the "Effective Date"). The Grant Funds (as defined in Section 3 below) shall be available for Eligible Costs (defined in Section 4.b below) incurred on or before the earlier of:
- a. Five years after the Effective Date; or
  - b. Three years from the date that any Bonds (as defined in Section 6.f.i below) are issued, in part, to fund this grant (the Availability Termination Date). Bonds were issued on April 11, 2019.

No Grant Funds are available for any expenditures before the Effective Date or after the Availability Termination Date. ODOT's obligation to disburse Grant Funds under this Agreement is further subject to Section 5.b.iv below.

- 2. 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**

Exhibits A through C are incorporated by reference into this Agreement. Exhibits A through C are attached hereto. 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.

- 3. Grant Funds.** The maximum grant funds to be distributed from ODOT to Recipient for the Project (as that capitalized term is defined in Section 4.a below) is **\$2,000,000** (the "Grant Funds").

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#### 4. Project:

**a. Use of Grant Funds.** The Grant Funds shall be used solely for the Project described in Exhibit A (the "Project") 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 amendment pursuant to Section 10.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 for the Project;
- (B) permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project;
- (C) eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement; and
- (D) capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations, (the "Code").

**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. "Related Parties" means, in reference to governmental units or 501(c)(3) organizations, members of the same controlled group within the meaning of Section 1.150-1(e) of the Code and, in reference to any person that is not a governmental unit or a 501(c)(3) organization, a related person as defined in Section 144(a)(3) of the Code;
- (B) loans or grants to be made to third parties;
- (C) any expenditures incurred before the Effective Date or after the earlier of the Availability Termination Date or the termination date of this Agreement; or
- (D) costs associated with the Project that substantially deviate from Exhibit A, Project Description or Recipient's Project Plan unless such changes are approved by ODOT by amendment of this Agreement.

#### **c. Final Report**

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Recipient shall submit a final completion report at the end of the Project showing that the grant proceeds were used to pay for Eligible Costs, as defined in Section 4(b), for all or a portion of the Project. The report shall show a breakdown of costs that were reimbursed by the Grant Funds. The Recipient shall issue a certification attesting to the proper use of the grant proceeds to ODOT.

## 5. Reimbursement Process.

- a. ODOT shall reimburse Eligible Costs up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by ODOT 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 prior to submitting invoices to ODOT for reimbursement. Receipt of final invoice by ODOT will trigger the need for a final on-site review of the Project.

Recipient shall present invoices, no more frequently than monthly, for Eligible Costs incurred directly to ODOT's Project Liaison for review and approval. Each invoice shall include the Agreement number, the start and end date of the 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, receipts, etc. Invoices must be based on actual expenses incurred and clearly specify the percentage of Project completion.

- b. ODOT's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, 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 disbursement.
  - ii. Recipient is in compliance with the terms of this Agreement, including without limitation completion of all prerequisites for reimbursement provided in Exhibit B.
  - iii. Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
  - iv. Recipient has provided to ODOT a request for reimbursement in accordance with Section 6.a. Recipient must submit its final request for reimbursement following completion of the Project and no later than ninety (90) days after the earlier of completion of the Project or the Availability Termination Date. Failure to submit the final request for reimbursement within ninety (90) days after the completion of the Project or the Availability Termination Date could result in non-payment.
- c. **Recovery of Grant Funds.** Any Grant Funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement ("Misspent Funds") must be returned to ODOT. Recipient shall return all Misspent Funds to ODOT promptly after ODOT's written demand and no later than fifteen (15) days after ODOT's written demand.

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**6. 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 under the Agreement, 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 benefit arising therefrom.
- 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 upon any relevant indictments or convictions of crimes.
- 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. Representations and Covenants Regarding the Tax-Exempt Status of Bonds.**

  - i. Recipient acknowledges that the State of Oregon issued State of Oregon Lottery Revenue Bonds (the "Bonds") on April 11, 2019 to, in part, fund this grant, with the interest paid on the Bonds excludable from gross income for federal income tax purposes. Recipient further acknowledges that the uses of the Grant Funds and the Project by Recipient during the term of the Bonds may impact the tax-exempt status. Accordingly, Recipient agrees to comply with all

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applicable provisions of the Code necessary to protect the exclusion of interest on the Bonds from federal income taxation.

ii. Recipient shall not, without prior written consent of ODOT, permit more than five percent (5%) of the Project to be used in a "private use" by a "private person" (as defined in the Code) if such private use could result in the State of Oregon, receiving direct or indirect payments or revenues from the portion of the Project to be privately used.

This paragraph f shall survive any expiration or termination of this Agreement.

- g. The warranties set forth in this Section 6 are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

## **7. 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 under this Agreement, 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, and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records, that are directly related to this Agreement, the Grant funds or the Project until the date that is three (3) years following the later of the final maturity or earlier retirement of all of the Bonds (including the final maturity or redemption date of any obligations issued to refund the Bonds, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Availability Termination Date. The State of Oregon anticipates issuing 20-year Bonds, therefore, Recipient should anticipate retaining Project records until at least June 30, 2040. 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 7, 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 moneys were expended.

This Section 7 shall survive any expiration or termination of this Agreement.

## **8. 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 funds covered by this Agreement within ten (10) days of Recipient discovering the breach.

### **b. Subagreement Indemnity; Insurance.**

- i.** Recipient shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless ODOT 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, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.
- ii.** Any such indemnification shall also provide that neither Recipient's contractor and subcontractor, nor any attorney engaged by Recipient's contractor and subcontractor shall defend any claim in the name of ODOT 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 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, or that Recipient's contractor is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State 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; and
  - ii. all procurement transactions are conducted in a manner providing full and open competition.

## 9. 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 period specified in this Agreement or any extension of that period, or the 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;

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- 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 prior to 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.

## 10. GENERAL PROVISIONS

- a. **Contribution.** 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.

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.

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

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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 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 hereto or notices to be given hereunder 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, and 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

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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 the Circuit Court of Marion County in the State of Oregon, 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 this its subject matter. The delay or failure of either Party to enforce any provision of

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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.

- n. Survival.** The covenants of Recipient under this Agreement related to the tax-exempt status, if any, of the Bonds, the continued operation and maintenance of the Project, and default and remedies, including, without limitation Sections 5.c., 6.f., 7 and 9 of this Agreement, shall survive disbursement of the Grant Funds and termination of this Agreement until the Bonds (including the final maturity or redemption date of any obligations issued to refund the Bonds) are no longer outstanding.

**SIGNATURE PAGE TO FOLLOW**

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**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.

**CITY OF PORTLAND**, by and through its  
elected officials

By \_\_\_\_\_  
Transportation Commissioner-in-Charge

)

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

(If required in local process)

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

Date \_\_\_\_\_

**Recipient Contact:**

Steve Szigethy, Capital Program Manager  
Portland Bureau of Transportation  
1120 SW 5th Avenue, Suite 800  
Portland, OR 97204  
503-823-5117  
steve.szigethy@portlandoregon.gov

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

By \_\_\_\_\_  
Director

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Active Transportation Section Manager

Date \_\_\_\_\_

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

By Samuel Zeigler  
Assistant Attorney General

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

Date via email dated June 18, 2019

**ODOT Project Liaison:**

Justin Bernt  
123 NW Flanders Street  
Portland, OR  
503-731-3016  
Justin.bernt@odot.state.or.us

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**EXHIBIT A**  
**Project Description, Key Milestones, Schedule and Budget**  
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**Project Name:** SW Capitol Highway: Multnomah Village to West Portland

**A. PROJECT DESCRIPTION**

The Project will provide new walkways and bikeways, stormwater management facilities, and water system upgrades along SW Capitol Highway between SW Garden Home Road and SW Taylors Ferry Road in the City of Portland. The east side of SW Capitol Highway will feature a sidewalk and protected bike lane; the west side will feature a multi-use path. Marked pedestrian crossings will be provided at bus stop locations along the project corridor. Stormwater improvements will include inlets in or adjacent to SW Capitol Highway and conveyance to four regional stormwater detention basins. Public water system upgrades are caused by the transportation and stormwater improvements and are included in the project. Alterations of some adjacent streets are necessary as part of the project, including SW 42nd Avenue south of SW Alice Street, SW Alice Street between SW 42nd Avenue and SW Capitol Highway, SW Dolph Court for 300 feet east of SW Capitol Highway, and SW Multnomah Boulevard between SW 45th Avenue and SW 40th Avenue. The project includes limited areas of permanent right-of-way and property acquisition, as well as widespread temporary construction easements, necessary to construct the project. All affected roadways are the jurisdiction of the City of Portland.

**B. PROJECT SCHEDULE**

Design engineering on the project began on March 20, 2017

The anticipated start date of Project construction is: December 30, 2019

The estimated completion date of Project is: May 28, 2021

**Table 2 – Funding Breakdown**

<b>A</b>	<b>Total Project Cost</b>	<b>\$22,155,000</b>
<b>B</b>	<b>Grant Award Amount</b>	<b>\$2,000,000</b>
<b>C</b>	<b>Recipient Share</b>	<b>\$20,155,000</b>

## **EXHIBIT B**

### **Recipient Requirements**

- I. Recipient shall comply with ORS 280.518, which requires any economic development program financed with proceeds from the state lottery to display a sign in a conspicuous location on Project site or specify in the program information that Project is financed with proceeds from the state lottery. ODOT will provide standard signage as appropriate. If Recipient chooses to make a custom sign, Recipient must obtain written approval from ODOT's Project Liaison to use its custom sign and Recipient shall be responsible for the cost of such custom signage. If Project site is remote and a sign would not be visible to the public, Recipient shall provide proof to ODOT's Project Liaison that Recipient has specified in its program information that Project is financed with proceeds from the state lottery.
- II. 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.
- III. Recipient shall notify ODOT's Project Liaison in writing when any contact information changes during the term of this Agreement.
- IV. Recipient shall pay back all of the Grant Funds to ODOT if Project is not completed in accordance with, or consistent with Exhibit A, as may be amended. Recipient obligations for Recovery of Grant Funds are provided in Section 5.c of this Agreement.
- V. Recipient and ODOT's Project Liaison shall, upon completion of all on-site work for the Project, perform an on-site review. Once review is completed, the ODOT Project Liaison may recommend acceptance of Project by filling out and signing the Recommendation of Project Acceptance Form (734-1384). The form is available at <https://www.oregon.gov/ODOT/Forms/2ODOT/7341384.pdf>
- VI. 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 represents and certifies 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) repayment of expended funds. In the event repayment of 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 7.a of this Agreement throughout the useful life of the Project. This paragraph shall survive any expiration or termination of this Agreement.

## VII. Americans with Disabilities Act Compliance:

- 1) **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
  - a) 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;
  - b) 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;
  - c) 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:  
  
<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
  - d) 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;
  - e) 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.
- 2) **Local Roads:** For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:
  - a) 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;
  - b) 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

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Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

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

Additional ODOT resources are available at the above-identified link..

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

- c) 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;
  - d) 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.
- 3) 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:
- a) Pedestrian access is maintained as required by the ADA;
  - b) Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed;
  - c) Recipient, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,;
  - d) 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
  - e) Applicable permitting and regulatory actions are consistent with ADA requirements.
- 4) Maintenance obligations in this section shall survive termination of this Agreement.

## 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.

- i. **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.
- ii. **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.
- iii. **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

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“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).

- iv. **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.
- v. **“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 Recipient’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.
- vi. **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.
- vii. **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 and self-insurance.

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