

AMENDMENT NUMBER 02
LOCAL AGENCY CERTIFICATION PROGRAM AGREEMENT
Supplemental Project Agreement No. 28473
FLEXIBLE FUNDS PROGRAM 2011
SURFACE TRANSPORTATION PROGRAM – URBAN
East Portland Active Transportation to Transit
City of Portland

This is Amendment Number 02 to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as “State,” and the **City of Portland**, acting by and through its elected officials, hereinafter referred to as “City,” both herein referred to individually as a “Party” and collectively as the “Parties.” The Parties entered into the Agreement on January 30, 2013, and Amendment Number 01 on August 3, 2015.

The Parties have now determined that the Agreement referenced above shall be amended to update the project name, scope, milestone dates, total project cost, and standard federal language.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**
 - a. **The Project name East Portland Access to Transit is replaced with East Portland Active Transportation to Transit**
 - b. **Exhibit A shall be deleted in its entirety and replaced with the attached Revised Exhibit A. All references to “Exhibit A” shall hereinafter be referred to as “Revised Exhibit A.”**
 - c. **Revised Exhibit B is deleted in its entirety and replaced with the attached 2nd Revised Exhibit B Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting.**
 - d. **Recitals, Paragraph 1, which reads:**
 1. By the authority granted in Local Agency Certification Program Agreement No. 26586 incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with City for the performance of work on the improvement Project. The Certification Program allows State to certify a Local Agency’s procedures and delegates authority to the certified Local Agency to administer federal-aid projects that are not on the National Highway System.

Is deleted in its entirety and replaced with the following:

1. By the authority granted in Local Agency Certification Program Agreement No. 26586 and No. 30890, incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with City for the performance of work on this improvement project. Agreement 26586 was in place from September 6, 2012 to September 18, 2015. Agreement 30890 became effective on September 18, 2015 and remains in effect.

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

1. Under such authority, City will infill missing sidewalk gaps on SE Division Street between I-205 and 148th Ave. refuge islands and Rectangular Rapid Flashing Beacons (RRFBs) or similar treatments will be constructed to provide safer crossing opportunities hereinafter referred to as "Project." In addition to the SE Division improvements, NE/SE 130's Neighborhood Greenway will be established. The improvements will include signing, striping, and crossing improvements for bicyclists and pedestrians. The project will coordinate with TriMet to install bike parking facilities at the Gateway park and ride. The location of the Project is approximately as shown on the detailed map attached hereto, marked "Revised Exhibit A," and by this reference made a part hereof. The Project description, tasks and deliverables, schedule and budget are further described in Revised Exhibit B, attached hereto and by this reference made a part hereof.

Is deleted in its entirety and replaced with the following:

1. Under such authority, City will design and construct sidewalk infill on SE Division between SE 100th and SE 157th, ADA curb ramp replacements, and curb extension where needed to provide for ADA ramps. City will also design and construct improvements for the 130s Neighborhood Greenway including the installation of a rectangular rapid flash beacon at NE Glisan and 128th, and neighborhood greenway signing, striping, and speed bumps. The location of the Project is approximately as shown on the detailed map attached hereto, marked "Revised Exhibit A," and by this reference made a part hereof.

f. TERMS OF AGREEMENT, Paragraph 2, Page 2, which reads:

2. The total Project cost is estimated at \$4,472,310, which is subject to change.

Is deleted in its entirety and replaced with the following:

2. The total Project cost is estimated at \$6,183,142.05, which is subject to change. Federal funds for this Project shall be limited to \$4,013,000.12. City shall be responsible for all remaining costs, including the 10.27 percent match for all eligible costs, any non-participating costs, and all

costs in excess of the federal or state funds. Any unused federal or state funds obligated to this Project will not be paid out by State, and will not be available for use by City for this Agreement or any other projects. "Total Project Cost" means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds. City will report the final cost of each phase of the Project at the completion of each phase, as well as the Total Project Cost at the end of the Project, to the State's Regional Local Agency Liaison.

g. TERMS OF AGREEMENT, Paragraph 3 and 4, page 2, which reads:

3. A portion of the Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. STP Flexible Funds for this Project will be limited to \$640,000. The Project will be financed with STP Flexible Funds at the maximum allowable federal participating amount, with City providing the match and any non-participating costs, including all costs in excess of the available federal funds. The STP Flexible Funds are available for all phases of the Project.
4. A portion of the Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. STP Urban Funds for this Project will be limited to \$3,373,000. The Project will be financed with STP Urban Funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

Are deleted in their entirety and identified as RESERVED.

h. TERMS OF AGREEMENT, Paragraph 6, Page 2, which reads:

6. City shall make payments for work performed on the project, including all construction costs, and invoice State for 100 percent of its costs. State shall reimburse City invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement, and deposited local funds, and any non-participating costs will be the responsibility of the City. State shall perform work in the estimated amount of \$45,000. The work being performed by the State includes completion of part 3 prospectus, Environmental investigation and reports needed for CE clearance, Federal oversight, compliance review, project development and construction monitoring, Project documentation and accounting closeout. State shall simultaneously invoice FHWA and City for State's Project costs, and City agrees to reimburse State for the federal-aid matching state share and any non-participating costs as determined in accordance with paragraph numbers 3 and 4, above upon receipt of invoice. City understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.

Exhibit A

City/State

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Is deleted in its entirety and replaced with the following:

6. City shall make all payments for work performed on the Project, including all construction costs, and invoice State for one-hundred (100%) percent of its costs. State shall reimburse Agency invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement and any non-participating costs will be the responsibility of the City. State shall invoice Federal Highway Administration (FHWA) and City for work provided as part of the Project. City agrees to reimburse State for work performed for the project upon receipt of invoice. Failure of City to make such payments to State may result in withholding of City's proportional allocation of State Highway Trust Funds until such costs are paid. City understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.

i. TERMS OF AGREEMENT, Paragraphs 8, -11, which read:

8. All STP Flexible Funds must adhere to the specific obligation and completion requirements. Non-construction projects must be ready for obligation no later than September 30, 2012 and completed or implemented by December 31, 2014. Construction projects must obligate the Preliminary Engineering phase by September 30, 2012, Right-of-Away and Construction phases must be obligated by September 30, 2013. Construction projects must be completed by December 31, 2014. After September 30, 2012 for non-construction Projects and September 30, 2013 for construction projects the State may withdraw and reassign any STP Flexible Funds not yet obligated for the Project and shall have no obligation to fund any remaining phases of work through the Flexible Funds Program. The withdrawal of funds will not affect funding and payments for Preliminary Engineering or other phases of work that were obligated prior to the above stated dates.

9. All STP Urban Funds must adhere to the specific obligation and completion requirements. Non-construction projects must be ready for obligation no later than September 30, 2015 and completed or implemented by December 31, 2015. Construction projects must obligate the Preliminary Engineering phase by September 30, 2012, Right-of-Away phases must be obligated by September 30, 2015 and Construction phases must be obligated by September 30, 2016. Construction projects must be completed by December 31, 2017. After September 30, 2015 for non-construction Projects and September 30, 2016 for construction projects the State may withdraw and reassign any STP Urban Funds not yet obligated for the Project and shall have no obligation to fund any remaining phases of work through the STP Urban Funds Program. The withdrawal of funds will not affect funding and payments for Preliminary Engineering or other phases of work that were obligated prior to the above stated dates.

10. If City cannot meet obligation of STP Flexible funds as intended by the program as stated in Paragraph 6, above, then City shall adhere to the Project Change Request process as stated in Exhibit B.

11. City shall submit Monthly Progress Reports to State's Contact and State's Flexible Funds Program Manager and Project Change Requests to State's Contact, following the process as listed in Exhibit B.

Are deleted in their entirety and identified as RESERVED.

j. TERMS OF AGREEMENT, Paragraph 16, Page 3, which reads:

16. Local Agency Certification Program Agreement No. 26586 was fully executed on September 6, 2012. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.

Is deleted in its entirety and replaced with the following:

16. Local Agency Certification Program Agreement No. 26586 was fully executed on September 6, 2012 and was in effect until September 18, 2015. Local Agency Certification Program Agreement No. 30890 was fully executed on September 18, 2015 and remains in effect. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.

k. TERMS OF AGREEMENT, Paragraph 26, Page 5, which reads:

26. State's Contact and Local Agency Liaison is Bret Richards, 123 NW Flanders Street, Portland, OR 97209, (503) 731-8276, bret.n.richards@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

Is deleted in its entirety and replaced with the following:

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

l. Insert new TERMS OF AGREEMENT, Paragraphs 30 through 36, to read as follows:

30. Information required by 2 CFR 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by State to City with the Notice to Proceed.

31. Indirect Cost Rate.

- a. As required by 2 CFR 200.331(a)(4), the indirect cost rate for this Project at the time the Agreement is written is 76.07% . This rate may change during the term of this Agreement upon notice to ODOT and ODOT's subsequent written approval.
- b. If the approved rate(s) change(s) during the term of this Agreement, City shall invoice ODOT using the current indirect cost rate(s) for the project on file with ODOT at the time the work is performed. If City does not have approved indirect cost rate(s) on file with ODOT at the time the work is performed, City shall invoice ODOT using a zero percent (0%) rate.

32. By signing this Federal-Aid Agreement, City agrees to comply with the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and is subject to the following award terms <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>. If, in the preceding fiscal year, City received more than 80% of its gross revenues from the federal government, those federal funds exceed \$25,000,000 annually, and the public does not have access to information about the compensation of executives through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, City shall report the total compensation and names of its top five executives to State. City shall report said information to State within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as 2nd Revised Exhibit B.

33. City shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. State and City shall also include this requirement in all contracts and ensure that contractors include this requirement in their subcontracts.

34. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, City shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or

hereafter defined in ORS 30.260 (hereinafter, referred to individually and collectively as "Claims"), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of City's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of State, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.

35. Any such indemnification shall also provide that neither City's contractor and subcontractor nor any attorney engaged by City's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that City's contractor is prohibited from defending the State of Oregon, or that City's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against City's contractor if the State of Oregon elects to assume its own defense.

36. Americans with Disabilities Act Compliance:

a. **General:** Agency agrees to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (together, "ADA") as identified in paragraph 1 of the **General Provisions** section of the Local Agency Certification Program Agreement.

b. **ADA Design Standards, Construction Specifications, and Inspections:** Agency agrees to comply with the design and construction standards and the design exception documentation and approval requirements agreed to in the **Standards** section of the Local Agency Certification Program Agreement. In addition, with respect to ADA-related design standards, design exception approvals, construction specifications, and inspections, Agency agrees to comply with the following:

i. For Project locations on or along the Oregon State Highway System (state highway), Agency shall apply ODOT's current ADA-related design standards, construction specifications, and design exception documentation and approval requirements for design, modification, upgrade, or construction of Project sidewalks, curb ramps, and pedestrian-activated signals, as applicable to the Project, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT

Exhibit A

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Construction Specifications, and current ODOT Curb Ramp Inspection form. Agency further agrees to utilize ODOT standards to assess and ensure Project compliance with the ADA, and to document ramp inspections per subsection (c.)(i.) below. Design exceptions on State-owned facilities must be approved by State. For project locations on or along State-owned portions of the National Highway System ("NHS") design exceptions must be approved by State and/or FHWA.

ii. For project locations not on or along a state highway, including locally-owned portions of the NHS, Agency shall apply its own ADA-compliant design standards, construction specifications, design exception documentation and approval process, and inspection documentation process, as approved by State and FHWA for use on federally funded projects

c. ADA Forms: Prior to issuing the Second Notification, per Oregon Standard Specification 00180.50(g) or Agency's approved equivalent, Agency agrees to submit to State the following:

i. For all curb ramps designed, constructed, upgraded, or modified for this Project on or along a state highway, submit completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Regional Local Agency Liaison. The completed form is the required documentation from Agency that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form 734-5020 and instructions are available at the following website:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>

ii. For all curb ramps not located on or along a state highway, Agency shall complete and keep on file Agency's ODOT- and FHWA-approved ADA curb ramp inspection form (or other approved document) to show that each Project curb ramp meets Agency's curb ramp standards and is ADA compliant or conforms to Agency's approved ADA design exception.

d. State Inspection: Agency shall promptly notify State of Project completion and allow State to inspect Project sidewalks, curb ramps, and pedestrian-activated signals, as applicable to the Project, located on or along the state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.

e. Work zone access: Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone in

accordance with the applicable ODOT or Agency Standards, as set forth in subsections (a) through (c) above. For any work zone on or along the state highway, any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route on or along the state highway is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction in accordance with ODOT standards and processes.

f. Reimbursement: Unless Agency has an approved design exception, State will only reimburse Agency for work that meets the applicable ODOT or Agency standards as set forth in subsections (a) through (c) above, regardless of whether the work is on a State-owned or an Agency-owned facility.

g. On-going Maintenance Obligation: Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:

- i. Pedestrian access is maintained as required by the ADA,
- ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
- iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
- iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
- v. Applicable permitting and regulatory actions are consistent with ADA requirements.

h. Survival: Maintenance obligations in this section shall survive termination of this Agreement.

Exhibit A

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5. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
6. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Recipient certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

THE PARTIES, by execution of this Amendment, hereby acknowledge that their signing representatives have read this Amendment, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2015-2018 Statewide Transportation Improvement Program, (Key #18021) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

Signature Page to Follow

CITY OF PORTLAND, by and through
its elected officials

By _____

Date _____

APPROVED AS TO FORM

By _____
City Counsel

Date _____

City Contact:

Elizabeth Mahon, Project Manager
Portland Bureau of Transportation
1120 SW 5th Avenue, Room 800
Portland, OR 97204
503-823-0396
elizabeth.mahon@portlandoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Director

Date _____

APPROVAL RECOMMENDED

By _____
Certification Program Manager

Date _____

By _____
Region 1 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

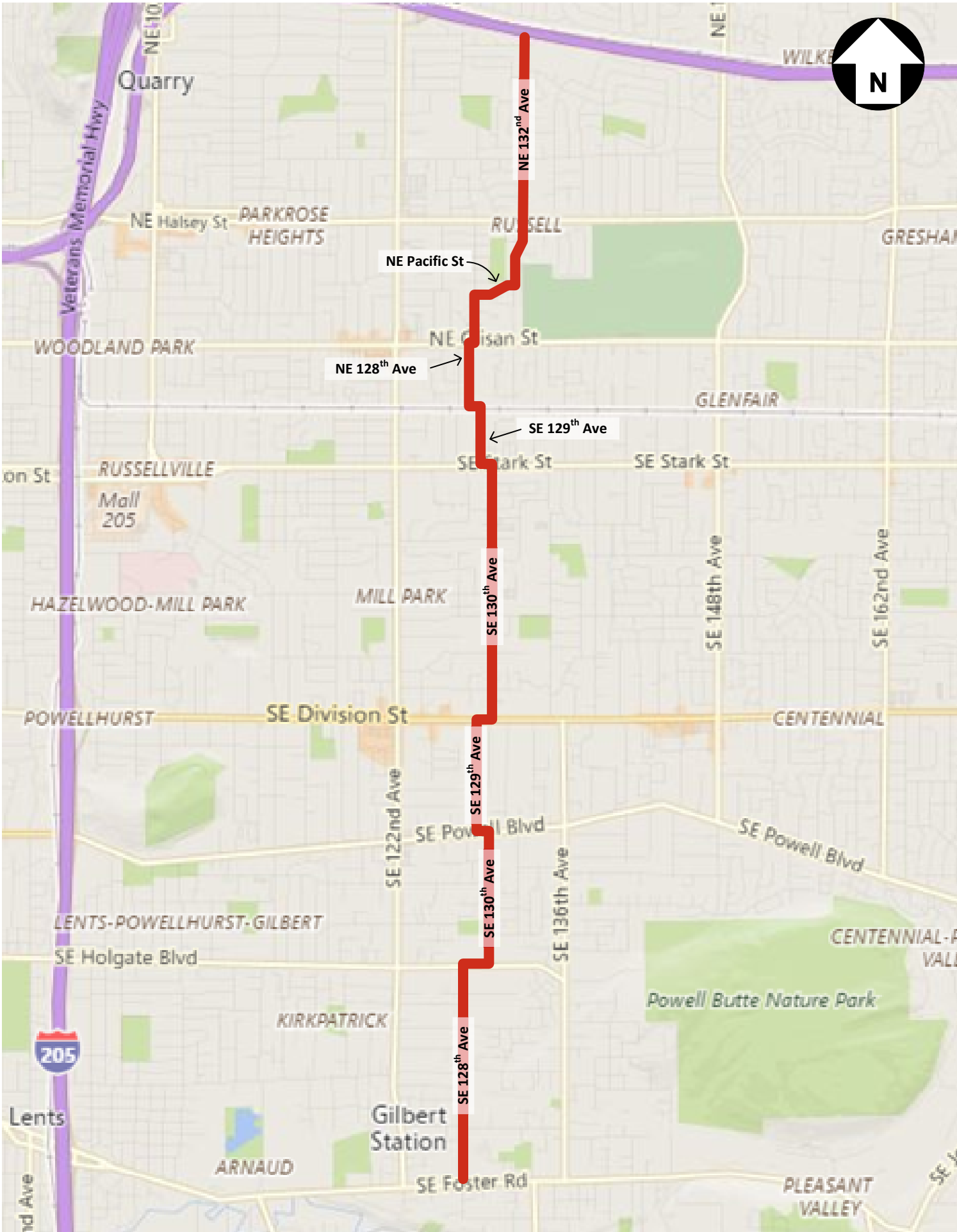
By _____
Assistant Attorney General

Date: _____

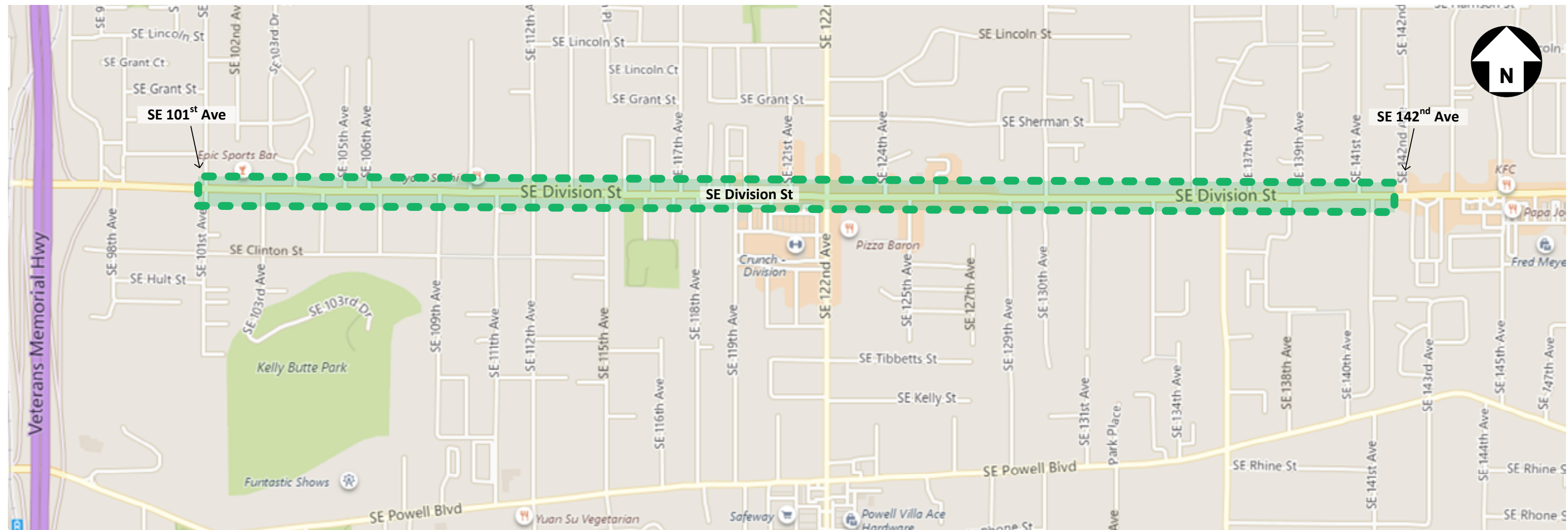
State Contact:

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

Revised Exhibit A - Project Location
East Portland Access to Transit: 130s Bikeway Route Map



East Portland Access to Transit: SE Division St Sidewalk Infill Limits Map



2nd Revised Exhibit B

Federal Funding Accountability and Transparency Act (FFATA) **Subaward Reporting**

(For purposes of this Exhibit, references to "your organization" shall mean "Agency" and references to "ODOT" shall mean "State.") The Oregon Department of Transportation (ODOT) is required to fulfill a federal requirement for contracting under the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS). FFATA reporting is a requirement for subawards (also known as subrecipients) of federal awards in excess of \$25,000,000. Your organization will enter into an agreement with ODOT where the funding source is a federal grant with a subrecipient relationship. Your organization is required to submit the information below to the Oregon Department of Transportation within fourteen calendar days of execution of the Agreement and annually thereafter, if applicable. (See the following page for further details.)

Legal entity name:

Data Universal Number System (DUNS) number:

Executive compensation

Executive compensation information is also required to determine whether or not the following information must be reported in FSRS:

- a. In your organization's previous fiscal year, did your organization receive 80% or more of its annual gross revenue and \$25,000,000 or more in federal procurement contracts, subcontracts, loans, grants, subgrants, cooperative agreements and federal financial assistance awards subject to the Transparency Act? (Include parent organization, all branches, and all affiliates worldwide.)
☐ Yes ☐ No If "yes," proceed to b. If "no," no further action is required and submittal of this form is not required.
- b. Does the public have access to information about the compensation of the senior executives in your organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?
☐ Yes ☐ No If "yes," provide a link to the SEC: <http://www.sec.gov> where this information is located and return form to the ODOT contact shown at the bottom of this form.
Provide link here:
If "no," provide compensation information below.

Names and annual compensation amounts of the five most highly compensated executives:

1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

Business entity contact information (person completing form):

Type name	Title	Date
Return completed form to: Jeff Flowers, Program and Funding Services Manager; Oregon Department of Transportation; 555 13 th Street NE; Salem, OR 97301; Jeffrey.A.FLOWERS@odot.state.or.us		

Background on FFATA requirements

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of the Act is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov.

Definition of compensation

Your organization is considered a subrecipient of federal funds. Unless your organization is exempt, FFATA requires you to report total compensation for each of your five most highly compensated executives for the preceding completed year. Total compensation means the cash and non-cash dollar value earned by the executive during the subrecipient's preceding fiscal year and includes the following: salary and bonus; awards of stock, stock options, and stock appropriation rights; earnings for services under non-equity incentive plans; change in pension value; above-market earnings on deferred compensation which is not tax-qualified; and other compensation as defined in 2 CFR Part 170, Section 170.330(b)(5)(vi).

More detailed information about the FFATA can be found at: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>

If you have any questions, contact:

Jeff Flowers
Program and Funding Services Manager
Oregon Department of Transportation
555 13th Street NE
Salem, OR 97301
Jeffrey.A.FLOWERS@odot.state.or.us
Telephone: 503-986-4453