

AMENDMENT NO. 3
Martin Luther King Blvd/Grand (O'ring UPRR #02115 & #08905) Viaducts
Pacific Highway East, State Highway No. 1E
City of Portland

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT", and the City of Portland, a municipal corporation of the State of Oregon, acting by and through its Elected Officials, hereinafter referred to as "CITY", entered into Agreement No. 733 on November 20, 2003. Said Agreement covers replacement of the Martin Luther King (MLK) Boulevard Viaduct and its approaches; improvements to the Grand Avenue Viaduct; construction of storm water facilities; other improvements as addressed in the final project Decision Statement; and the Jurisdictional Transfer of a portion of MLK from ODOT to CITY.

This Agreement was modified by Amendment No. 1 to the Agreement on October 27, 2005 to add additional funding to the Project due to the extension of the design development phase; and add increased CITY staff participation due to the complexity of the Project; to revise Exhibit D; and to update standard paragraph language.

Additionally the Agreement was amended by Amendment No. 2 on October 9, 2006 to provide additional funding to the Project due to increased CITY staff participation in both the design and construction phases; to extend the Project completion date; to broaden the scope of the Project to include replacement of the Grand Avenue structure; to change the names of the ODOT Project Manager and Design Project Leader; and to revise Exhibit D.

It has now been determined by ODOT and CITY that the Agreement referenced above, although remaining in full force and effect, shall be amended by this Amendment No. 3 to acknowledge the intention of both parties to the Agreement to the jurisdictional transfer of both the Grand Avenue and MLK Viaducts, their approaches, and all additional properties and supporting storm water facilities associated with the Project to the CITY; to clarify and broaden the scope of the storm water facilities; to increase the cost of the Project, including additional cost for services provided by the CITY through its Bureau of Environmental Service (BES) for design and construction services for said storm water facilities; to acknowledge both parties' interest in coordination of the Project with the City's East Side Willamette River Combined Sewer Overflow (ESCSO) Tunnel project; to revise City and ODOT Obligations to reflect said coordination inclusive of construction of portions of the Project's stormwater facilities by the City and reimbursement of costs for said facilities by ODOT; to add Exhibits H, I, and J; and to revise Exhibits A, D and G.

"EXHIBIT A" shall be deleted in its entirety and replaced with "Exhibit A-1", attached hereto, and by this reference made a part hereof. All references to "Exhibit A" shall hereinafter be referred to as "Exhibit A-1."

“REVISED EXHIBIT D, AMENDMENT 2” shall be deleted in its entirety and replaced with “Exhibit D-1” attached hereto, and by this reference made a part hereof. All references to “Revised Exhibit D, Amendment 2” shall hereinafter be referred to as “Exhibit D-1.”

“EXHIBIT G” shall be deleted in its entirety and replaced with “Exhibit G-1”, attached hereto, and by this reference made a part hereof. All references to “Exhibit G” shall hereinafter be referred to as “Exhibit G-1.”

Insert new “EXHIBIT H”, “EXHIBIT I”, and “EXHIBIT J” attached hereto, and by this reference all made a part hereof.

Insert new Paragraph 6 of Recitals, Page 1, as follows:

6. For the purpose of furthering the development of a state highway system adapted in all particulars to the needs of the people of the State of Oregon, ODOT and CITY agree to eliminate from the state highway system a portion of Pacific Highway East described below and hereinafter referred to as Unit A.

DEFINITIONS, Page 1, which reads:

The Date of Second Notification is the date that in accordance with Section 00180.50(g) of the 2002 Standard Specifications the ODOT Engineer acknowledges that all required construction work, including change order work and extra work, has been satisfactorily completed and, therefore, time charges stop for one or all of the completion times for the project.

Shall be deleted in its entirety and amended to read:

The Date of Final Second Notification is the date that in accordance with Section 00180.50(g) of the 2002 Standard Specifications the ODOT Engineer acknowledges that all required construction work and plant establishment, including change order work and extra work, has been satisfactorily completed and, therefore, time charges stop for one or all of the completion times for the project.

All references to “Second Notification” shall hereinafter be referred to as “Final Second Notification.”

Paragraph 1 of Terms of Agreement (Amendment No. 2), Pages 1 and 2, which reads:

1. ODOT plans and proposes to replace the MLK Boulevard and Grand Avenue Viaducts and their approaches, hereinafter referred to collectively as "Viaducts," with new structures designed to include boulevard improvements as within the final approved Decision Statement, marked Exhibit B, attached hereto, and by this reference made a part hereof. ODOT also plans to construct a stormwater treatment facility for the replaced Viaducts, and to complete other improvements as within the final approved Decision Statement all hereinafter referred to as "Project." Said improvements include construction of crashworthy balustrades, sidewalks, shoulders, landscaping, lighting, transition speed zones and connection to the Springwater Trail. Historical Transportation interpretive information will be placed in two sites below the Viaducts and within the towers of the Viaducts proper. As part of the Project, ODOT also plans to research, photograph and record the history of the Inman-Poulsen Lumber Mill Garage and the Viaducts. The location of the Project is approximately as shown on the sketch map, marked Exhibit A attached hereto, and by this reference made a part hereof.

Shall be deleted in its entirety and amended to read:

1. ODOT plans and proposes to replace the MLK Boulevard and Grand Avenue Viaducts and their approaches, hereinafter referred to as "Project". The new structures will be designed to include boulevard improvements as depicted in the final approved Decision Statement, marked Exhibit B, attached hereto, and by this reference made a part hereof. The Project also includes plans to construct storm water facilities and other improvements including crashworthy balustrades, sidewalks, shoulders, landscaping, lighting, transition speed zones and a connection to the Springwater Trail. Historical Transportation interpretive information will be placed in two sites below the Viaducts and within the towers of the Viaducts proper. As part of the Project, ODOT also plans to research, photograph and record the history of the Inman-Poulsen Lumber Mill Garage and the Viaducts. The location of the Project is approximately as shown on the sketch map, marked Exhibit A-1 attached hereto, and by this reference made a part hereof.

Paragraph 5 of Terms of Agreement, Page 3, which reads:

5. ODOT will define and transfer the "operating" right-of-way, as identified as Unit A (including all underlying properties which are described further in the attached Exhibit G, hereinafter made a part hereof) in ODOT Obligations No. 10 to CITY so long as it is used for public road purposes. If said right-of-way is no longer used for public road purposes, it shall automatically revert to ODOT. The transfer will be accomplished through CITY's acceptance of the Jurisdictional Transfer Document written by ODOT and being circulated in conjunction with this Agreement. Upon execution of this Agreement, and prior to Contractor's Second Notification of Completion, the Oregon Transportation Commission

(OTC) or designee will be requested to approve a Resolution Eliminating a Section of Highway from the State Highway System and Minor Amendment to the Oregon Highway Plan for Highway Elimination with a provision which states that the date of the Contractor's Second Notification of Completion shall be the official roadway/right of way transfer date. Upon the conclusion of the Project (Contractor's Second Notification of Completion) and following any required amendments to this Agreement, ODOT will enter the date of the Contractor's Second Notification of Completion into the Jurisdictional Transfer Document; hereinafter referred to as "Date of Transfer" and will send it to Multnomah County for recording purposes.

Shall be deleted in its entirety and amended to read:

5. ODOT will define and transfer the right of way identified as Unit A as shown on Exhibit A-1 (including all properties shown as "to be transferred to the City" in Exhibit G-1, attached hereto and hereinafter made a part hereof). Said properties are transferred to the CITY so long as used for public road purposes. If said right of way is no longer used for public road purposes, it shall automatically revert to ODOT. The transfer will be accomplished through CITY's acceptance of the Revised Jurisdictional Transfer Document written by ODOT and circulated upon execution of Amendment No. 3 to this Agreement. Upon execution of Amendment No. 3 to this Agreement, and prior to Contractor's Final Second Notification of Completion, the Oregon Transportation Commission (OTC) or designee will be requested to approve a Resolution Eliminating a Section of Highway from the State Highway System and Minor Amendment to the Oregon Highway Plan for Highway Elimination with a provision which states that the date of the Contractor's Final Second Notification of Completion shall be the official roadway/right of way transfer date. Upon the conclusion of the Project (Contractor's Final Second Notification of Completion) and following any required amendments to this Agreement, ODOT will enter the date of the Contractor's Final Second Notification of Completion into the Revised Jurisdictional Transfer Document; hereinafter referred to as "Date of Transfer" and will send it to Multnomah County for recording purposes. Some properties shown in Exhibit G-1 may require additional conveyance documents which, if required, will be prepared by ODOT Right of Way Section and filed with the County concurrently with the Revised Jurisdictional Transfer Document.

Paragraph 6 of Terms of Agreement, Page 3, which reads:

6. If ODOT acquires excess property or any uneconomic remnants with this Project, said property will remain in ODOT ownership for future disposal as provided by law.

Shall be deleted in its entirety

Paragraph 7 of Terms of Agreement (Amendment No. 2), Page 3, which reads:

7. As a result of CITY accepting future jurisdiction and maintenance of the Viaduct structures, CITY will be providing certain plan and design expertise, plan and design reviews, on-site inspection of the work related to the structures, temporary traffic control support, and public relations assistance. Said CITY activities will be conducted at Project expense.

Shall be deleted in its entirety, renumbered as Paragraph 6, and amended to read:

6. As a result of CITY accepting future jurisdiction and maintenance of Unit A, CITY will be providing certain plan and design expertise, plan and design reviews, on-site inspection of the work related to the Project, temporary traffic control support, and public relations assistance. Said CITY activities will be conducted at Project expense and further defined in Exhibit D-1.

Paragraph 8 of Terms of Agreement (Amendment No. 2), Page 3, which reads:

8. The total estimated Project cost is \$51,931,000. The Project will be financed with federal funds available to ODOT. ODOT shall provide the match for the federal funds and any non-participating costs. Total cost for CITY work to be reimbursed by ODOT (as part of the Project cost) is \$357,500 and is further described in the attached exhibit, marked Revised Exhibit D Amendment 2, and by this reference made a part hereof. If said CITY costs are to exceed \$357,500, an executed amendment to this Agreement shall be required prior to said additional costs being incurred and reimbursed. The said \$357,500 estimate includes \$45,025 in costs incurred by the CITY for design activities which, when added to all prior expenses, exceeds the prior Agreement Amendment reimbursement limits of \$103,280. The design activities that incurred the additional \$45,025 were performed with the knowledge and permission of ODOT. With this Amendment No. 2, ODOT obtained federal approval, and documentation thereof, on July 3, 2006 to retroactively reimburse the CITY and to include the additional \$45,025 as part of the revised estimate.

Shall be deleted in its entirety, renumbered as Paragraph 7, and amended to read:

7. The total estimated Project cost is \$79,066,120. The Project will be financed with federal funds available to ODOT and funds available to the CITY. ODOT shall provide the match for the federal funds and any non-participating costs related to the use of federal funds. The total cost for said CITY services to be reimbursed by ODOT as part of the Project cost is \$604,500 and is further described in the attached Exhibit D-1, and by this reference made a part hereof. An executed amendment to this Agreement shall be required prior to any additional costs being incurred and reimbursed. The CITY services amount of \$604,500

includes \$45,025 in costs incurred by the CITY for design activities from Amendment No. 2 which, when added to all prior expenses, exceeded the prior Agreement Amendment reimbursement limits of \$103,280. The design activities that incurred the additional \$45,025 were performed with the knowledge and permission of ODOT. With the Amendment No. 2, ODOT obtained federal approval, and documentation thereof, on July 3, 2006 to retroactively reimburse the CITY and to include the additional \$45,025 as part of the revised estimate.

Additionally the total estimated Project cost (separate from the \$604,500 in Exhibit D-1) includes an additional ODOT single payment of \$58,500 to CITY for improvements to be constructed by the CITY through its Bureau of Environmental Services (BES), as described in CITY Obligations, and identified for payment by ODOT under ODOT Obligations and as shown in Exhibit I, attached hereto, and by this reference made a part hereof. Any additional costs for work shown in Exhibit I, beyond ODOT's \$58,500 single payment contribution, shall be at CITY's own expense.

Also, the total estimated Project cost includes a one time payment of \$17,085 to CITY for the CITY's operation and maintenance of the South Swale shown in Exhibit H and further described in ODOT and CITY Obligations. The payment represents the estimated cost of operation and maintenance of the swale for an assumed facility life of forty (40) years.

Paragraph 9 of Terms of Agreement (Amendment No. 2), Page 3, which reads:

9. This Agreement shall become effective upon execution of this Agreement by all parties and shall remain in effect for the purpose of ongoing ownership and maintenance by ODOT until The Date of Transfer, or ten calendar years, whichever is sooner. The estimated completion date of the Project construction is 2010. Upon the Date of Transfer, ODOT relinquishes all maintenance and repair responsibilities and liability for Unit A and CITY accepts all maintenance and repair obligations and liability for Unit A.

Shall be deleted in its entirety, renumbered as Paragraph 8, and amended to read:

8. This Agreement shall become effective upon execution of this Agreement by all parties and shall remain in effect for the purpose of ongoing ownership and maintenance by ODOT until The Date of Transfer, or ten (10) calendar years, whichever is sooner. The estimated completion date of the Project construction is 2011. Upon the Date of Transfer, ODOT relinquishes all ownership, maintenance and repair responsibilities and liability for Unit A and CITY accepts all ownership, maintenance and repair obligations and liability for Unit A.

Paragraph 1 of ODOT Obligations (Amendment No. 2), Page 4, which reads:

1. ODOT's Acting Construction Project Managers for Project are John D. Smith and Michael Struloeff, 3700 SE 92nd, Portland, OR 97266, and ODOT's Design Project Leader for Project is Winston Sandino, 123 Flanders Blvd., Portland, OR 97209 or approved designees.

Shall be deleted in its entirety and amended to read:

1. ODOT's Construction Project Manager for the Project is Wayne Statler, 3700 SE 92nd, Portland, OR 97266, and ODOT's Design Project Leader for the Project is Robyn Bassett, 123 Flanders Blvd., Portland, OR 97209 or approved designees.

Paragraph 5 of ODOT Obligations, Page 4, which reads:

5. ODOT's Construction Project Manager shall coordinate with CITY's Project Manager, as needed, to enable CITY to perform inspection of construction of the MLK Viaduct for the purpose of accepting ownership of said structure upon completion of the Project.

Shall be deleted in its entirety and amended to read:

5. ODOT's Construction Project Manager shall coordinate with CITY's Project Manager, as needed, to enable CITY to perform inspection of construction of the Project for the purpose of accepting ownership upon completion of the Project.

Paragraph 7 of ODOT Obligations (Amendment No. 2), Page 4, which reads:

7. ODOT shall, upon receipt of an acceptable billing, reimburse CITY for all actual costs associated with services provided by CITY as further estimated in the Revised Exhibit D, Amendment 2. Work performed by CITY other than what is addressed in the Revised Exhibit D, Amendment 2 is not reimbursable by ODOT. CITY's estimated total reimbursable cost shall not exceed \$357,500 unless an executed amendment to this Agreement is approved by both parties to this Agreement.

Shall be deleted in its entirety and amended to read:

7. ODOT shall, upon receipt of an acceptable billing, reimburse CITY for all actual costs associated with services provided by CITY as further estimated in the Exhibit D-1. In addition ODOT shall, upon execution of this amendment, forward to CITY (in care of BES) a fixed amount of \$58,500 for services to be performed by BES on behalf of the Project and further described in Exhibit I. Any CITY costs exceeding the \$58,500 are at CITY's own

expense. Any CITY costs exceeding \$604,500 for work performed under Exhibit D-1 shall not be reimbursed unless an executed amendment to this Agreement is approved by both parties to this Agreement. Work performed by CITY other than what is addressed in the Exhibit D-1 and Exhibit I is not reimbursable by ODOT.

Paragraph 10 of ODOT Obligations, Page 5, which reads:

10. Upon the Date of Transfer, ODOT shall formally eliminate Unit A (including all underlying properties which are described further in the attached Exhibit G) as a portion of Pacific Highway East and the state highway system, as shown in Exhibit A. All right, title, and interest of ODOT including all jurisdiction, maintenance, and control, shall pass to and vest in CITY. Any right-of-way being transferred in which ODOT has any incidence of title shall be vested in CITY so long as used for public road purposes. If said right-of-way is no longer used for public road purposes, it shall automatically revert to ODOT. Unit A is described as all the land lying within ODOT's right-of-way boundaries as follows:

UNIT A

All the land lying in Sections 2, 3, 10, 11, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon within ODOT's right-of-way boundaries of SE Grand Avenue between SE Woodward Street and the south end of the SE Division Street structure, Bridge #08905, near SE Sherman Street (Pacific Highway East, northbound from M.P. 1.45N to M.P. 1.11N); SE Martin Luther King, Jr. Boulevard between SE Harrison Street and SE Woodward Street (Pacific Highway East, southbound from M.P. 1.00 to M.P. 1.45); and the southbound street connections between the Pacific Highway East and SE Division Place.

Shall be deleted in its entirety and amended to read:

10. Upon the Date of Transfer, ODOT shall formally eliminate Unit A (including all properties shown as "to be transferred to the City" in Exhibit G-1) as a portion of Pacific Highway East and the state highway system, as shown in Exhibit A-1. All right, title, and interest of ODOT including all jurisdiction, maintenance, and control, shall pass to and vest in CITY. Any right of way being transferred in which ODOT has any incidence of title shall be vested in CITY so long as used for public road purposes. If said right of way is no longer used for public road purposes, it shall automatically revert to ODOT. Unit A is described as all the land lying within ODOT's right of way boundaries as follows:

UNIT A

All the land lying in Sections 2, 3, 10, 11, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon within ODOT's right of way boundaries of SE Grand Avenue from the northerly curblin of its intersection with SE Woodward Street (MP 1.45N) to northerly end of the Division Street structure (MP 1.03N); and SE Martin Luther King, Jr. Boulevard from the northerly curblin of its intersection with SE Woodward Street (MP 1.45) to the northerly end of the Division Street structure (MP 1.00); and the southbound street connections between the Pacific Highway East and SE Division Place.

Any excess property acquired by ODOT for this Project that is determined to be not needed for the operation or maintenance of the Project, will remain in ODOT ownership for future use or disposal as provided by law.

Paragraph 11 of ODOT Obligations, Page 5, which reads:

11. ODOT shall continue to own and maintain (for structural integrity) the Grand Avenue Viaduct between M.P. 1.03 and M.P. 1.11, as shown on Exhibit A, except as noted in CITY Obligations No. 14. ODOT shall continue to be responsible for the structural integrity including the footings, columns, beams, earthquake retrofits, and maintenance of the rocker bearings. ODOT also remains responsible for replacement of said structure if replacement is determined necessary by ODOT and the structure is still under ODOT's ownership.

Shall be deleted in its entirety

Paragraph 12 of ODOT Obligations, Page 5, which reads:

12. ODOT shall own, operate and maintain the Ross Island Bridge stormwater treatment facility to be constructed as part of this Project.

Shall be deleted in its entirety, renumbered as Paragraph 11, and amended to read:

11. The property for the stormwater swale shown in Exhibit H, hereafter called the South Swale, is transferred to CITY as part of Unit A. Under this Amendment, ODOT agrees to provide all necessary ODOT permits, at no cost to the CITY, for the construction of said facility. ODOT shall, upon execution of this Amendment, pay CITY, a one time lump sum amount of \$17,085 towards the operation and maintenance of the South Swale. The swale will manage stormwater from the Ross Island Bridge; an ODOT owned and maintained facility. This payment

represents the estimated cost of operation and maintenance of the swale for an assumed facility life of forty (40) years.

ODOT Obligations, Paragraphs 13 through 16 shall become 12 through 15 with the deletion of Paragraph 11 above.

Insert new Paragraphs 16 and 17 of ODOT Obligations, Page 6 to read as follows:

16. Along with the transfer of Unit A, ODOT hereby additionally transfers the ownership and maintenance responsibilities for the swale, storm lines, manholes, stormwater treatment vault, and inlets as shown in Exhibit H.
17. ODOT agrees to transfer and assign its easement and agreement rights with Union Pacific Railroad (UPRR) to the City at time of Contractor's Final Second Notification of Completion. Said transfer and assignment of easement and agreement rights will be at no charge to the City and will also include the pipe within the easement which serves as an outlet for the North Swale. The easement and agreement rights to be transferred include a Pipeline Crossing Agreement, dated June 29, 2005, a Grant of Easement and Agreement, dated January 9, 2007, and Easement, dated January 9, 2007, copies of which are attached as Exhibit J.

Paragraph 1 of CITY Obligations (Amendment No. 1), Page 2, which reads:

1. CITY's Project Manager for this Project is Mike Coleman, 1120 SW 5th Avenue, Suite 800, Portland, OR 97204-1914. Phone: 503-823-6838. CITY shall assign CITY's Project Manager to ODOT's Project Team. CITY's participation in the Project Team shall be at Project expense. This expense is defined in Exhibit D.

Shall be deleted in its entirety and amended to read:

1. CITY's Project Manager for this Project is David O'Longaigh, 1120 SW 5th Avenue, Suite 800, Portland, OR 97204-1914. Phone: 503-823-0371. CITY shall assign CITY's Project Manager to ODOT's Project Team. CITY's participation in the Project Team shall be at Project expense. This expense is defined in Exhibit D-1.

Paragraph 6 of CITY Obligations (Amendment No. 2), Page 5, which reads:

6. CITY shall, at Project expense and with ODOT Construction Project Manager coordination, perform CITY inspection of the Viaducts construction for the purpose of accepting ownership of said structures upon completion of the Project. CITY shall also, if requested by the ODOT

Construction Project Manager, be responsible for all CITY inspection documentation and shall submit copies to ODOT's Construction Project Manager. CITY's cost of services specific to this obligation is estimated in Revised Exhibit D, Amendment 2.

Shall be deleted in its entirety and amended to read:

6. CITY shall, at Project expense and with ODOT Construction Project Manager coordination, perform CITY inspection of the Project construction for the purpose of accepting ownership of Project upon its completion. CITY shall also, if requested by the ODOT Construction Project Manager, be responsible for all CITY inspection documentation and shall submit copies to ODOT's Construction Project Manager. CITY's cost of services specific to this obligation is estimated in Exhibit D-1.

Paragraph 7 of CITY Obligations (Amendment No. 1), Page 5, which reads:

7. CITY's statement of work, for reimbursable work associated with the review of all plans, specifications, and special provisions for the MLK Viaduct work shall be submitted to ODOT's Project Leader on a quarterly basis for design services. This applies to reimbursable costs incurred prior to the Bid Opening date while satisfying CITY Obligations 1 and 4 and as described in Exhibit D. The final billing for this work shall be submitted no later than 90 days after notification from ODOT's Project Leader.

Shall be deleted in its entirety and amended to read:

7. CITY's statement of work, for reimbursable work associated with the review of all plans, specifications, and special provisions for the Project shall be submitted to ODOT's Project Leader on a quarterly basis for design services. This applies to reimbursable costs incurred prior to the Bid Opening date while satisfying CITY Obligations 1 and 4 and as described in Exhibit D-1. The final billing for this work shall be submitted no later than ninety (90) days after notification from ODOT's Project Leader.

Paragraph 8 of CITY Obligations (Amendment No. 1), Page 5, which reads:

8. CITY's statement of work, for reimbursable work associated with the ongoing Project coordination and traffic impact management as well as the review and inspection of the MLK Viaduct work shall be submitted to ODOT's Construction Project Manager on a regular basis, no more frequently than quarterly for construction inspection. This applies to reimbursable costs incurred after the Bid Opening date and as described in Exhibit D. The final billing for this work shall be submitted no later than six (6) months after the completion of work.

Shall be deleted in its entirety and amended to read:

8. CITY's statement of work, for reimbursable work associated with the ongoing Project coordination and traffic impact management as well as the review and inspection of the Project work shall be submitted to ODOT's Construction Project Manager on a regular basis, no more frequently than quarterly for construction inspection. This applies to reimbursable costs incurred after the Bid Opening date and as described in Exhibit D-1. The final billing for this work shall be submitted no later than one (1) year after Final Second Notification.

Paragraph 9 of CITY Obligations (Amendment No. 2), Page 5, which reads:

9. If CITY's total costs as estimated in Revised Exhibit D, Amendment 2 are to exceed \$357,500 an executed amendment to this Agreement shall be required prior to said additional costs being incurred and reimbursed.

Shall be deleted in its entirety and amended to read:

9. If CITY's total costs, as estimated in Exhibit D-1, are to exceed \$604,500 an executed amendment to this Agreement shall be required prior to additional costs being incurred and reimbursed.

Paragraph 12 of CITY Obligations, Page 8, which reads:

12. CITY agrees, upon execution of this Agreement and upon Date of Transfer, to accept all of ODOT's right, title, and interest in Unit A; to accept jurisdiction and control over the unit; and to maintain the unit (including all illumination and signing) as a portion of its CITY street system as long as needed for the service of persons living thereon or a community served thereby. Any right-of-way being transferred in which ODOT has any title shall be vested in CITY so long as used for public road purposes (including all underlying properties which will be described further in the attached Exhibit G). If said right-of-way is no longer used for public road purposes, it shall automatically revert to ODOT. Said jurisdictional transfer shall be completed after ODOT's issuance of the Contract Second Notification of Completion and through adoption of a Resolution Eliminating a Section of Highway from the State Highway System and Minor Amendment to the Oregon Highway Plan by the Oregon Transportation Commission or designee. ODOT will enter the date of the Contractor's Second Notification of Completion into the Jurisdictional Transfer Document as the official roadway/right of way transfer date.

Shall be deleted in its entirety and amended to read:

12. CITY agrees, upon execution of this Agreement and upon Date of Transfer, to accept all of ODOT's right, title, and interest in Unit A; to accept jurisdiction and control over the unit; and to maintain the unit (including all illumination and signing) as a portion of its CITY street system as long as needed for the service of persons living thereon or a community served thereby. Any right of way being transferred in which ODOT has any title shall be vested in CITY so long as used for public road purposes (including all properties shown as "to be transferred to the City" in Exhibit G-1). If said right of way is no longer used for public road purposes, it shall automatically revert to ODOT. Said jurisdictional transfer shall be completed after ODOT's issuance of the Contractor's Final Second Notification of Completion and through adoption of a Resolution Eliminating a Section of Highway from the State Highway System and Minor Amendment to the Oregon Highway Plan by the Oregon Transportation Commission or designee. ODOT will enter the date of the Contractor's Final Second Notification of Completion into the Revised Jurisdictional Transfer Document as the official roadway/right of way transfer date.

Paragraph 13 of CITY Obligations, Page 8, which reads:

13. As part of accepting jurisdiction and control of Unit A, CITY agrees to accept transfer of Union Pacific Railroad (UPRR) easements obtained under ODOT Obligations No. 2.

Shall be deleted in its entirety and amended to read:

13. As part of accepting jurisdiction and control of Unit A, CITY agrees to accept the assignment of the Union Pacific Railroad (UPRR) Pipeline Crossing Agreement and easement obtained under ODOT Obligation No. 2 and referred to in ODOT Obligations No. 17.

Paragraph 14 of CITY Obligations, Page 8, which reads:

14. CITY shall, upon Date of Transfer, and at its own expense, be responsible for all maintenance of the MLK Viaduct; including all surface maintenance and structural integrity, all illumination and signing and all associated conditions or environmental mitigation requirements imposed during design or construction of Project.

Shall be deleted in its entirety and amended to read:

14. CITY shall, upon Date of Transfer, and at its own expense, be responsible for all maintenance of the Project; including all surface maintenance, structural integrity, all traffic signals, illumination, signing, landscaping, all storm water facilities within the Jurisdictional Transfer limits of Unit A except as identified as being retained by ODOT on Exhibit H. City shall also, upon Date of Transfer, identify itself to the responsible power and water agencies as the party

responsible for all power costs for said traffic signals and illumination and for all power and water costs associated with the Project irrigation for landscaping.

Paragraph 15 of CITY Obligations, Page 8, which reads:

15. CITY shall, upon Date of Transfer, and at its own expense, accept responsibility for all surface maintenance, striping and signage on the Grand Avenue Viaduct at the time of transfer of the MLK Viaduct structure. Said surface maintenance shall include: pavement repair, joint repair, striping, sweeping and snow removal. The CITY shall also be responsible for sidewalk cleaning and repair, drainage, illumination, signing, rail repair, protective fencing and be responsible for all maintenance of landscaping and planter boxes on the structure. The CITY shall seek approval from ODOT prior to any additional asphalt or other road surfacing added to the structure and prior to any attachments made to the structure. ODOT shall continue to be responsible for the structural integrity including the columns, beams, earthquake retrofits, or maintenance of the bearing and rocker arms. ODOT also remains responsible for replacement of said structure if replacement is determined necessary by ODOT and the structure is still under ODOT's ownership.

Shall be deleted in its entirety

Paragraph 16 of CITY Obligations, Page 9, which reads:

16. CITY shall, upon Date of Transfer, and at its own expense, accept, operate, and maintain the water treatment system as designed and constructed for the Project, except for the facilities that exclusively serve the Ross Island Bridge.

Shall be deleted in its entirety

Paragraph 19 of CITY Obligations, Page 9, which reads:

19. CITY acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of CITY which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

Shall be deleted in its entirety, renumbered to Paragraph 17, and amended to read:

17. CITY acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of CITY which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

Paragraph 21 of CITY Obligations, Page 9, which reads:

21. CITY agrees, upon ODOT's future reconstruction or replacement of the Grand Avenue Viaduct, to enter into Jurisdictional Transfer Agreement and Jurisdictional Transfer Document to accept jurisdiction and maintenance of the subject structure.

Shall be deleted in its entirety

CITY Obligations, Paragraphs 17 through 22 shall hereinafter be renumbered as Paragraphs 15 through 19 with the deletion of Paragraphs 15, 16, and 21 above.

Insert new Paragraphs 20, 21, and 22 of CITY Obligations to read as follows:

20. CITY shall design, construct, and maintain the South Swale. City agrees that its design of the facility shall meet CITY/BES requirements, which ODOT has determined meets ODOT regulatory obligations to NMFS for treatment of runoff for the eastside of the Ross Island Bridge. Said ODOT regulatory obligations to NMFS are further defined in NMFS Biological Opinions #2006/01027 MLK Grand Avenue Overcrossing and #2006/05053 Division Street to Ross Island Bridge and also in the Biological Assessments associated with said Opinions. CITY also agrees to have the South Swale constructed by December 31, 2012 to meet ODOT's regulatory obligations. CITY agrees that if the South Swale is not fully constructed and in operation by December 31, 2012, any fines and/or further mitigations imposed by NMFS shall be the obligation of the CITY at no cost to ODOT.
21. CITY agrees to construct the South Swale, through its BES ESCSO Project, in and around the South Swale site and inclusive of South Swale improvements described in Exhibit I and as shown on Exhibit H. City agrees to provide As-Built drawings as confirmation of work completed along with statement of final costs for assurance of ODOT's advance payment for said work. Delivery of the As-Built must be made within the NMFS Final Report deadline which is approximately ninety (90) days following the constructed date of December 31, 2012. If for any reason, any or all improvements described in Exhibit I are not constructed or

performed by CITY by December 31, 2012, CITY agrees to reimburse ODOT for all or for individual improvements not performed as itemized in Exhibit I.

22. CITY agrees to proportionately reimburse ODOT for any of the advance one-time payment of \$17,085 for the operation and maintenance of the South Swale if for any reason the CITY ceases to maintain said facility.

Paragraph 4 of General Provisions (Amendment No. 1), Page 17, which reads:

4. ODOT and CITY will strictly follow the rules, policies and procedures of the "Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970" as amended, ORS 281.060, ORS 35.346, State of Oregon Right of Way Manual, and Federal Highway Administration Federal Aid Policy Guide.

Shall be deleted in its entirety and amended to read:

4. ODOT and CITY, or its consultant, shall acquire all necessary rights-of-way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by the party (or on behalf of its consultant) doing the work. If CITY acquires the right of way, they shall provide a letter from CITY's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the ODOT Region 1 Right of Way Office for co-signature and possible audit. If CITY elects to have ODOT perform right of way functions, a separate agreement shall be executed between CITY and ODOT right of way, referencing this Agreement number.

Paragraph 6 of General Provisions, Page 10, which reads:

6. This Agreement may be terminated by mutual written consent of both parties.

ODOT may terminate this Agreement effective upon delivery of written notice to CITY or at such later date as may be established by ODOT, under any of the following conditions:

- a. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.

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- b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if ODOT is prohibited from paying for such work from the planned funding source.
- c. If CITY fails to provide written concurrence of Concept, Preliminary, Advance and Final plans.

CITY may terminate this Agreement effective upon delivery of written notice to ODOT, if the Project is not built in accordance with the preferred alternative in the Environmental Assessment and the final approved Decision Statement (Exhibit B). In this event, ODOT shall not seek reimbursement of federal funds.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

Shall be deleted in its entirety and amended to read:

6. Termination:

- a. This Agreement may be terminated by mutual written consent of both parties.
- b. ODOT may terminate this Agreement effective upon delivery of written notice to CITY or at such later date as may be established by ODOT, under any of the following conditions:
 - i. If CITY fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - ii. If either party fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from other party fails to correct such failures within ten (10) days or such longer period as parties may authorize.
 - iii. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.
 - iv. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if

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ODOT is prohibited from paying for such work from the planned funding source.

- c. CITY may terminate this Agreement effective upon delivery of written notice to ODOT or at such later date as may be established by CITY, under any of the following conditions:
 - i. If ODOT fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - ii. If ODOT fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from other party fails to correct such failures within ten (10) days or such longer period as parties may authorize.
 - iii. If the Project is not built in accordance with the preferred alternative in the Environmental Assessment and the final approved Decision Statement (Exhibit B). In this event, ODOT shall not seek reimbursement of federal funds.
- d. Any termination to this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

Paragraph 6.a of General Provisions (Amendment No. 1), Page 7, shall be deleted in its entirety and replaced by 6.a above.

Insert new Paragraphs 9 and 10 of General Provisions to read as follows:

9. CITY acknowledges its requests of ODOT to modify certain work items on the Project in an effort to minimize any future impacts to the Project facilities once it is under City's jurisdiction. City is prepared to reimburse ODOT for any costs incurred by ODOT for such modification requests and agrees to enter into a separate MOU and agreement to address such costs along with its method of payment. ODOT agrees to keep an accurate accounting of such requested changes and subsequent costs and keep the CITY informed of the additional expenses. The maximum cost for implementation of said modification requests is currently estimated at \$210,000.

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10. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations.

SIGNATURE PAGE TO FOLLOW

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways, to approve and sign agreements over \$75,000 when the work is related to a project

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included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission or in a line item in the biennial budget approved by the Director.

CITY OF PORTLAND, by and through its elected officials

By _____
Mayor

Date _____

By _____
Auditor

Date _____

APPROVAL RECOMMENDED

By _____
Director, PDOT

Date _____

By _____
Director, BES

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
City Counsel

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date: _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By _____
Region 1 Area Manager

Date _____

By _____
State Right of Way Manager

Date _____

By _____
Region 1 Maintenance/Operations Manager

Date _____

By _____
Technical Services Manager, Chief Engineer

Date _____

By _____
State Traffic Engineer

Date _____