

Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 25,012
EPA SmartWay Technology Outreach Center

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 "State"; and the CITY OF PORTLAND acting by and through its elected officials, hereinafter referred to as "Agency", collectively referred to as "Parties."

RECITALS

1. By the authority granted in Certification Program Agreement No. 21,492 incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with Agency for the performance of work on this improvement project.
2. The Project in this Supplemental Project Agreement is one of the required test projects that constitute conditional certification described in Local Agency Certification Program (Certification Program) Agreement No. 21,492.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, Agency agrees to pay for consultant costs for an estimated 5 (five) technical advisors who will work in a Diesel Fuel Reduction Market Outreach Center showroom to provide advise on diesel fuel saving technology being promoted by the US EPA SmartWay Partnership Program, hereinafter referred to as "Project".
2. The total estimated cost of the Project is \$200,000, which is subject to change.
3. This Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The CMAQ funds are limited to \$200,000. The Project will be financed with CMAQ funds at the maximum allowable federal participating amount, with Agency providing for any non-participating costs, including all costs in excess of the available federal funds. The match for the CMAQ funds are not required on this Project.
4. At the beginning of each Federal Year, Agency shall complete and provide State a CMAQ reporting form. See ODOT's Local Agency Guidelines Manual (LAG), Section A, Chapter 3, CMAQ Funding Fact Sheet for sample reporting form.

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5. Agency shall make all payments for work performed on the Project and invoice State for 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 Agency. State shall perform work in the estimated amount of \$1,000. State shall send monthly invoices to Agency's Project Manager. Agency understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.
6. Agency shall select the consultant to hire and manage the staff to be paid with funds from this Agreement per paragraph No. 1. Agency understands that this Project is a test project and agrees to comply with all of the terms and conditions found in Certification Program Agreement No. 21,492.
7. The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at Agency expense. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205.
8. State considers Agency a sub-recipient of the federal funds under this Agreement.
9. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. The Parties agree that this Agreement shall terminate if the funds for this Project are not obligated within 90 (ninety) days of the execution of this Agreement. Upon termination of this Agreement, State may reassign any CMAQ Funds not yet obligated for the Project and shall have no obligation to fund any remaining work through the CMAQ program.
10. Local Agency Certification Program Agreement No. 21,492 must be fully executed before any work can begin on this Project. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
11. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach. Agency will be ineligible to receive or apply for any Enhancement Funds until State receives full reimbursement of the costs incurred.
12. This Agreement may be terminated by mutual written consent of both Parties.

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13. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency 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 State fails to correct such failures within 10 days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. 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 State is prohibited from paying for such work from the planned funding source.
14. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
15. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
16. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 21,492, and the attached exhibits constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement

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shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

17. State's Project Liaison for the Agreement is Mark Foster, 123 NW Flanders, Portland, OR 97209, phone 503-731-8288, or by an individual designated by the State's Region Manager in the event of the unavailability of the aforementioned individual.

18. Agency's Project Liaison for this Agreement is Jennifer Porter, 721 NW 9th Ave, Suite 350, Portland, OR 97209, phone 503-823-6110 or an individual designated by the Agency in the event of the unavailability of the aforementioned individual.

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

The Project was approved by the Oregon Transportation Commission on November 14, 2007 as part of the 2008 - 2011 Statewide Transportation Improvement Program, Key No. 15595.

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 when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

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; Deputy Director, Central Services and the Chief of Staff, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Oregon Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director. The Director may also delegate to other Administrators the authority to execute intergovernmental agreements over \$75,000 for specific programs such as transportation safety, growth management and public transit.

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CITY OF PORTLAND, acting by and
through its elected officials

By _____
Mayor

Date _____

By _____
Auditor

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY
APPROVED AS TO FORM**

By *[Signature]*
CITY ATTORNEY

Date 7/29/08

Agency Contact:

Jennifer Porter
Office of Sustainable Development
721 NW 9th Ave, Suite 350
Portland, OR 97209
503-823-6110 503-823-4562
jporter@ci.portland.or.us
www.sustainableportland.org

State Contact:

Mark Foster
123 NW Flanders
Portland, OR 97209
Phone: 503-731-8288
mark.a.foster@odot.state.or.us

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

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date _____

By *[Signature]*
Region 1 Manager

Date 7/18/08

By _____
Highway Finance Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date: _____