

**INTERGOVERNMENTAL AGREEMENT
CHIMNEY PARK – PIER PARK
BICYCLE PEDESTRIAN BRIDGE PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into by and between Metro, a municipal corporation established pursuant to Oregon law and the Metro Charter (“Metro”) and the City of Portland (the “City”), an Oregon municipal corporation (collectively, the “Parties”). This Agreement is effective as of the last date of execution set forth below (the “Effective Date”).

RECITALS

- A. WHEREAS, the Oregon Department of Transportation (“ODOT”) selects transportation enhancement projects to receive funding from the Federal Transportation Enhancements Program, operating a competitive application process that solicits proposals from eligible transportation agencies. In the 2009-10 application process, Metro applied for \$1.5 million in funding to construct a trail bridge from an existing trail in Pier Park over the Union Pacific Railroad (the “Railroad”) to Chimney Park, in North Portland (the “Project”).
- B. WHEREAS, by Metro Council Resolution No. 10-4115 (“For the Purpose of Amending the 2008-11 Metropolitan Transportation Improvement Program (MTIP) to add the Springwater Corridor: Rugg Road to Dee St. Project and the Willamette Greenway Trail: Chimney Park Trail to Pier Park Project”) adopted on January 14, 2010, the Metro Council approved the recommendation of the Joint Policy Advisory Committee on Transportation to add the Chimney Park Trail to Pier Park Project to the 2008-11 MTIP, so that the Project would be eligible to receive Federal Transportation Enhancements funding.
- C. WHEREAS, on September 1, 2010, ODOT, Metro and the City of Portland entered into interagency agreement No. 26482, entitled: “LOCAL METRO AGREEMENT TRANSPORTATION ENHANCEMENT PROGRAM PROJECT Willamette Greenway Trail: Chimney Park – Pier Park Bridge” (the “ODOT Agreement”), attached as Exhibit A. The ODOT Agreement governs the design, preliminary engineering (“PE”), and construction of the Project by Metro as recipient of the \$1,499,000.00 Federal Transportation Enhancements Program grant.
- D. WHEREAS, the Willamette Greenway Trail is a part of the Regional Trail System under the jurisdiction and control of the City. Chimney Park and Pier Park are within the Willamette Greenway Trail and are part of the park system under the jurisdiction and control of the City. This Trail also closes a gap in the 40 Mile Loop, a Regional Trail identified by Metro Council.

- E. WHEREAS, on April 16, 2008, the City signed a letter of commitment to Metro dedicating \$220,000.00 in matching funding for the Project.
- F. WHEREAS, Metro and the City now wish to enter into this Agreement to provide for Metro to lead the effort to design, engineer, and construct a bicycle and pedestrian bridge over the Railroad line currently separating the City's Pier and Chimney Parks, in accord with the terms of the ODOT Agreement, except as otherwise modified herein. When built, the Project will complete an important gap in the multi-modal link between the surrounding neighborhoods, the Willamette Greenway Trail, Metro's Smith and Bybee Lakes Natural Area, the Columbia River and the 40 Mile Loop Trail.
- G. WHEREAS, on _____, 2011, via ordinance No. _____ the Portland City Council authorized the City of Portland Parks to enter into this Agreement with Metro.

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual covenants and agreements set forth herein, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Metro and the City covenant and agree as follows:

1. **Project Description.** The Project consists of a the design, PE, and construction of a bicycle and pedestrian bridge (collectively, the "Work") spanning the Railroad line currently separating Pier Park and Chimney Park, as depicted in the attached Exhibit B. The Project will consist of the following components:
 - A bridge spanning the Railroad right of way, to be supported on either end by buttresses constructed entirely on City property, such that the bridge spans the right-of-way at a height satisfactory to the Railroad, but is not built upon it.
 - Trail connections to tie the bridge into the existing trail system.
 - Design elements that visually connect the parks and create a strong pedestrian experience linking the two parks.
 - Sustainable design features that make a compelling artistic and environmental statement.
2. **General Objective.** The purpose of this Agreement is to expressly set forth the Parties' understanding regarding (a) their respective project management, technical, and financial roles and (b) the coordination of staff and financial resources to complete the Work, including the production of final plans, specifications and cost estimates, and obtaining the permission of the Railroad for an overcrossing, in accord with the ODOT Agreement. This Agreement further establishes the roles and responsibilities of Metro and the City in completing the Work and sets forth the terms and conditions of said participation in the Project.

3. **Selection of the ODOT Consultant.** Metro has utilized the ODOT Region 1's On-Call PE, Design and Construction Engineering Services "mini-rfp process" to identify the likely consultant team (the "ODOT Consultant") that will perform the design and PE work and that will oversee the construction of the Project, in accord with the ODOT Agreement. ODOT will enter into a separate construction contract for the Project, as set forth in more detail in Section 7.2, below.
4. **Management Committee**
 - 4.1 A Management Committee will be organized, comprised of the following individuals or their designees at a minimum (others may be added):

Metro:	Justin Patterson Metro 600 NE Grand Avenue Portland, OR 97232-2736
City:	Kathleen Wadden City of Portland Parks Portland, OR 97201
 - 4.2 The Management Committee shall be responsible for reviewing and approving in writing any changes to the ODOT Consultant that has been identified as of the date of this Agreement. The City and Metro agree to promptly provide input and approvals in writing.
 - 4.3 The decisions of the Management Committee regarding issues that may arise with respect to the ODOT Consultant or the performance and administration of the Work will be made by consensus. Committee Members will serve as the responsible party and point of contact for their respective organizations.
 - 4.4 The City and Metro shall each bear its own costs for participation in the Management Committee. The City may not charge the Project for costs associated with the Work except as specifically provided in this Agreement, or unless agreed to in writing by all members of the Management Committee.
 - 4.5 The City and Metro agree that all public communications concerning the Work and the Project, such as press releases or information provided to the media, will be undertaken jointly by the Parties and will be subject to the prior written approval of each member of the Management Committee.
5. **Project Funding.** The total amount of funding available to design, engineer and construct the Project is **\$1,719,000.00** (the "Project Funding"). The sources of Project Funding shall be as follows:

- 5.1 Metro Contribution. Metro will contribute \$1,499,000.00 in Transportation Enhancement Program funding to the Project, as a sub-recipient of ODOT Transportation Enhancement Program funds, awarded through the ODOT Agreement. Metro's contribution to the Work shall be limited to the pass-through Transportation Enhancement Funding allocated to the Project, and in-kind contribution of contract administration services.
- 5.2 City Contribution. The City shall contribute \$220,000.00 in local cash matching funds from its systems development charge ("SDC") funds to the Project, through Portland Parks and Recreation when requested by ODOT for each phase of work requiring said matching funds. The City has, as of the date of this Agreement, already provided the first installment of its matching funds.
- 5.3 Excess Costs. If the cost estimates for construction resulting from the design and PE portions of the Work exceed the available Project Funding, Metro and the City agree to undergo value engineering to reduce the construction cost of the Project to fit within the available Project Funding. If the estimated cost of the Project cannot be so reduced, the City agrees to seek additional funding from the City Council to cover the estimated shortfall.
6. **Design Development.** Metro shall serve as the primary point of contact with the ODOT Consultant, and shall manage the ODOT Consultant throughout the course of the Work. Metro agrees to invite the City to participate in all meetings, and to include the City in all correspondence and decisions regarding all phases of the Work.
 - 6.1 Schedule. A preliminary project schedule has been developed and attached as Exhibit C and hereby incorporated herein. The dates on this schedule are subject to change. However, the City and Metro shall use good faith efforts to meet these dates and to proceed with their respective obligations at a pace necessary to maintain these dates and complete the design and PE portions of the Work by 2012 as required by ODOT.
 - 6.2 Public Involvement. The City will conduct public involvement, as needed during the course of the Project to inform stakeholders or interested parties, with the prior input of the Management Committee.
 - 6.3 Approvals. The Management Committee shall review and approve in writing the Work at each stage of the Project. Said approvals shall be binding on the City of Portland Parks and Recreation; provided, however, that the City's approval of any Work shall not be deemed a representation or warranty of the Work's quality, adequacy, or safety.
 - 6.4 Design Amendments and Change Orders. Design amendments and change orders must be approved by the Management Committee and must be accounted for in the Project cost estimates. Design amendments or change orders that result in

increased cost shall not be requested by the City or agreed upon by the Parties, unless the estimated increased costs resulting from the design amendments or change orders are off-set through value engineering or paid for by the City through an increase in the City's contribution as set forth in Section 5.3 above.

7. **Construction**

7.1 **Development Permits.** The Work shall be conducted in compliance with any discretionary land use approvals and development permits of the City of Portland Bureau of Development Services ("BDS"), including all fees and charges imposed by BDS for obtaining same, and with all other applicable local, State and Federal permits required. Metro and the City shall jointly oversee the ODOT Consultant's land use and development permit application work.

7.2 **Construction Contract.** Based on the designs provided by the ODOT Consultant, ODOT will bid and enter into a construction contract with a contractor that will construct the Project. The parties acknowledge and agree that they have no right to approve the contractor.

8. **Term.** The term of this Agreement shall be ten (10) years from the Effective Date, but shall run concurrently with the term of the ODOT Agreement, and shall terminate earlier if the ODOT Agreement terminates prior to the end of the term of this Agreement.

9. **Railroad Overcrossing.** Metro, with the assistance of the ODOT Consultant, shall submit an application to the Railroad and if applicable, to the ODOT Rail Safety Division, for a bridge overcrossing, and shall coordinate and manage the application and approval process.

10. **Right of Entry.** The City grants to Metro, the ODOT Consultant, and the contractor constructing the Project, and each of their agents and subcontractors, the right to enter upon Pier Park and Chimney Park for the purpose of performing all activities reasonably necessary to perform the Work and to fulfill Metro's obligations under this Agreement. Metro, the ODOT Consultant, and/or the contractor shall obtain (at no cost to Metro or the Project) a Non Park Use permit from Portland Parks and Recreation which will set forth the specific terms and conditions of the right of entry granted in this section.

11. **General Provisions**

11.1 **City's General Indemnification.** The City, to the maximum extent permitted by law and subject to the limitations set forth in the Oregon Constitution, Oregon Tort Claims Act, and ORS Chapter 30, shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any

statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the wrongful acts and omissions of the City in performing or failing to perform its duties hereunder.

- 11.2 Metro's General Indemnification. Metro, to the maximum extent permitted by law and subject to the limitations set forth in the Oregon Constitution, Oregon Tort Claims Act, and ORS Chapter 30, shall defend, indemnify and hold harmless the City, its elected officials, officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, resulting directly from the wrongful acts and omissions of Metro in performing or failing to perform its duties hereunder.
- 11.3 Joint Termination for Convenience. The Parties may terminate all or part of this Agreement based upon a mutual determination that such action is in the public interest. Termination under this provision shall be effective upon 10 days' written notice of termination signed by the Parties.
- 11.4 Default. Any party to this Agreement may declare a default before the date of expiration, if that party determines, in its sole discretion, that another party has failed to comply with the terms and conditions of this Agreement and is therefore in violation of its terms. The party wishing to declare default shall promptly notify the defaulting party in writing of that determination and document said default with reasonable particularity. Thereafter, the defaulting party shall have 30 days to cure the default. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be deemed complied with if the defaulting party begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the default as soon as practicable.
- 11.5 Laws of Oregon – ORS 279. This Agreement shall be governed by the laws of the State of Oregon, and the Parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS Chapter 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provisions were a part of this Agreement.
- 11.6 Assignment. No party may assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the Parties may subcontract for performance of any of their responsibilities under this Agreement.
- 11.7 Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro
Justin Patterson, Project Manager
600 NE Grand Avenue
Portland, OR 97232-2736

To City: Kathleen Wadden
City of Portland Parks and Recreation
Portland, OR 97201

11.8 Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this Agreement.

11.9 Entire Agreement. This Agreement, as supplemented by the ODOT Agreement, constitutes the entire agreement between the Parties on the matter addressed herein, and supersedes any prior or contemporaneous oral or written communications, agreements or representations relating to the Project. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by any party of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year set forth below.

CITY OF PORTLAND

METRO

By: _____

By: _____

Title: _____

Michael J. Jordan
Title: Chief Operating Officer

Date: _____

Date: _____

Approved as to form:

By: **APPROVED AS TO FORM**

By: _____

Portland City Attorney
Andrea Mengoni
CITY ATTORNEY

Metro Attorney

EXHIBIT A

ODOT Agreement
(Follows on Next Page)

Exhibit A

Misc. Contracts & Agreements
No. 26,482

LOCAL METRO AGREEMENT
TRANSPORTATION ENHANCEMENT PROGRAM PROJECT
Willamette Greenway Trail: Chimney Park – Pier Park Bridge

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"; PORTLAND URBANIZED AREA METROPOLITAN PLANNING ORGANIZATION, acting by and through its designation, hereinafter referred to as "Metro"; and the CITY OF PORTLAND, acting by and through its elected officials, hereinafter referred to as "City", collectively referred to as the "Parties."

RECITALS

1. Willamette Greenway Trail is a part of the Regional Trail System under the jurisdiction and control of City. Chimney Park and Pier Park are within the Willamette Greenway Trail and are part of the park system under the jurisdiction and control of City.
2. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. Under provisions of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, (SAFETEA-LU) State is required to set aside federal funds for projects to address transportation enhancement activities, hereafter referred to as Enhancement Funds.

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 said provisions, State, Metro and City agree to **construct a bicycle – pedestrian bridge between Chimney Park and Pier Park as a part of the Willamette River Greenway Regional Trail**, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The Project will be conducted as a part of the Transportation Enhancement Program (TE) under Title 23, United States Code, which incorporated SAFETEA-LU. The total Project cost is estimated at \$1,749,000, which is subject to change. The

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Enhancement Funds are estimated at \$1,499,000 with Metro providing the 10.27 percent match for the Enhancement funds plus an additional \$78,000, and any non-participating costs, including all costs in excess of the available federal funds. The funds will be used for all phases of the Project.

- a. Metro must obtain approval from State's Transportation Enhancement Program Manager for any additional funds beyond the amount in Paragraph number 2 above. For additional Enhancement funds up to a total of **\$1,648,900** (10 percent over the **\$1,499,000** estimated Enhancement funding) Metro's matching share will be 10.27 percent of Enhancement-eligible costs. For any approved Enhancement funds above **\$1,648,900** Metro's matching share will be 50 percent of the Enhancement eligible costs.
 - b. Metro is not guaranteed the use of unspent funds for a particular phase of work. State will not release funds from any authorized phase of work for use on a subsequent phase unless specifically requested by Metro before obligating funds on the subsequent phase.
3. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Metro expense.
 4. State considers Metro a sub-recipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
 5. The term of this Agreement will begin on the date all required signatures are obtained and will terminate on completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. The attached Special Provisions may contain additional termination conditions.
 6. This Agreement may be terminated by mutual written consent of all Parties.
 7. State may terminate this Agreement effective upon delivery of written notice to Metro, or at such later date as may be established by State, under any of the following conditions:
 - a. If Metro fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

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- b. If Metro 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 ten (10) days or such longer period as State may authorize.
 - c. If Metro 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.
7. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
8. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2.
9. Metro, as recipients of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Metro's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Metro's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, 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 Metro, the indemnification amount will 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.
10. Metro and City certify and represent that the individual(s) signing this Agreement have been authorized to enter into and execute this Agreement on behalf of Metro and City, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Metro and City.

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11. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will 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 will constitute an original.
12. This Agreement and attached exhibits constitute 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 will bind either party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement will not constitute a waiver by State of that or any other provision.

IN WITNESS WHEREOF, each Party, by execution of this Agreement, hereby acknowledges that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The 2008 – 2011 Statewide Transportation Improvement Program (STIP) was approved by the Oregon Transportation Commission on November 14, 2007. This Project (Key #16812) was amended into 2008 -2011 STIP on January 22, 2010.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

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 included in the Statewide Transportation Improvement Program.

Signature Page to Follow

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Agreement No. 26,482

METRO, by and through the Portland
Urbanized Area Metropolitan Planning
Organization

By _____
Director

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Legal Counsel

Date _____

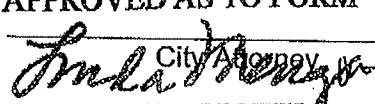
CITY OF PORTLAND, by and through its
Bureau of Parks & Recreation

By 
Director, Parks & Recreation

Date 8/5/10

APPROVED AS TO FORM

APPROVED AS TO FORM

By 
City Attorney
Date CITY ATTORNEY 8/2/10

Metro Contact:

Justin Patterson, Project Leader
Metro Regional Services
600 NE Grand Ave
Portland, OR 97232
503-813-7542
Justin.patterson@oregonmetro.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By _____
TE Program Manager or Local Govt.
Section Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

State Contact:

Michele Thom, Local Metro Liaison
Oregon Dept. of Transportation
123 NW Flanders
Portland, OR 97209
503-731-8279
michele.r.thom@odot.state.or.us

City Contact:

Kathleen Wadden
1122 SW Fifth Ave, Rm 1302
Portland, OR 97204-1933
503-823-6152
Kathleen.Wadden@portlandoregon.gov

ATTACHMENT NO. 1 to Agreement No. 26,482
SPECIAL PROVISIONS

1. The Parties agree that this Agreement will terminate if the funds for this Project are not obligated for construction on or before December 31, 2012 which is twelve (12) months after the target obligation date for the Project. Upon termination of this Agreement, State may reassign any Transportation Enhancement funds not yet obligated for the Project and will have no obligation to fund any remaining phases of work through the Transportation Enhancement program.
2. Metro, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments. Project plans will conform to the Oregon Highway Design Manual and the Oregon Bicycle and Pedestrian Plan.
3. Metro guarantees the availability of Metro funding in an amount required to fully fund Metro's share of the Project. Prior to award of the contract, Metro shall provide State its share of the Project cost upon receipt of request from State. The Project cost is defined as the Engineer's estimate plus ten (10) percent.
4. State may make available Region 1's On-Call PE, Design and Construction Engineering Services consultant for Local Metro Projects upon written request. If Metro chooses to use said services, they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
5. City hereby grants Metro the right to enter onto and occupy City right of way for purposes of designing and constructing the Project.
6. City shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and/or service demand. The Parties agree that the useful life of this Project is defined as twenty (20) years. State, City and Metro may conduct periodic inspections during the life of the Project to verify that Project is being properly constructed and properly maintained, and continues to serve the purpose for which federal funds were provided and meet the federal funding requirements.

ATTACHMENT NO. 1 to Agreement No. 26,482
SPECIAL PROVISIONS

7. Metro shall, upon completion of Project and as a condition to this Agreement, complete and file with the appropriate County Clerk, an Acknowledgment of Federal Assistance, which is attached hereto as Exhibit B, and by this reference is made a part hereof. Metro shall provide confirmation of this filing by forwarding to the State's Region 1 Manager a conformed copy of the recorded Exhibit B. By means of said acknowledgment, a lien will be established against said property and assets subject to the satisfaction of Metro's financial obligations, the continued use of said Project property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation and/or demand. State's interest in said Project property is proportional to the federal and state participation in Project. Metro will be ineligible to receive any Enhancement Funds while in default of conditions underlying the lien.
8. If Metro fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold Metro's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Metro breach. Metro will be ineligible to receive or apply for any Transportation Enhancement Funds until State receives full reimbursement of the costs incurred.
9. If City fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold City's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such City breach. City will be ineligible to receive or apply for any Transportation Enhancement Funds until State receives full reimbursement of the costs incurred.
10. Maintenance responsibilities will survive any termination of this Agreement.

ATTACHMENT NO. 2

FEDERAL STANDARD PROVISIONS

JOINT OBLIGATIONS PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify

Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

PROJECT ACTIVITIES

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
 - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has

written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

- b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which

the local agency participates. The cost of this audit can be partially prorated to the federal program.

30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
 - a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

STANDARDS

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
41. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.

42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

GRADE CHANGE LIABILITY

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency 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 anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency 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 any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

49. All employers, including Agency that employ subject workers who work under this Agreement 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. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

50. Agency certifies by signing the Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.

EXHIBIT "A"

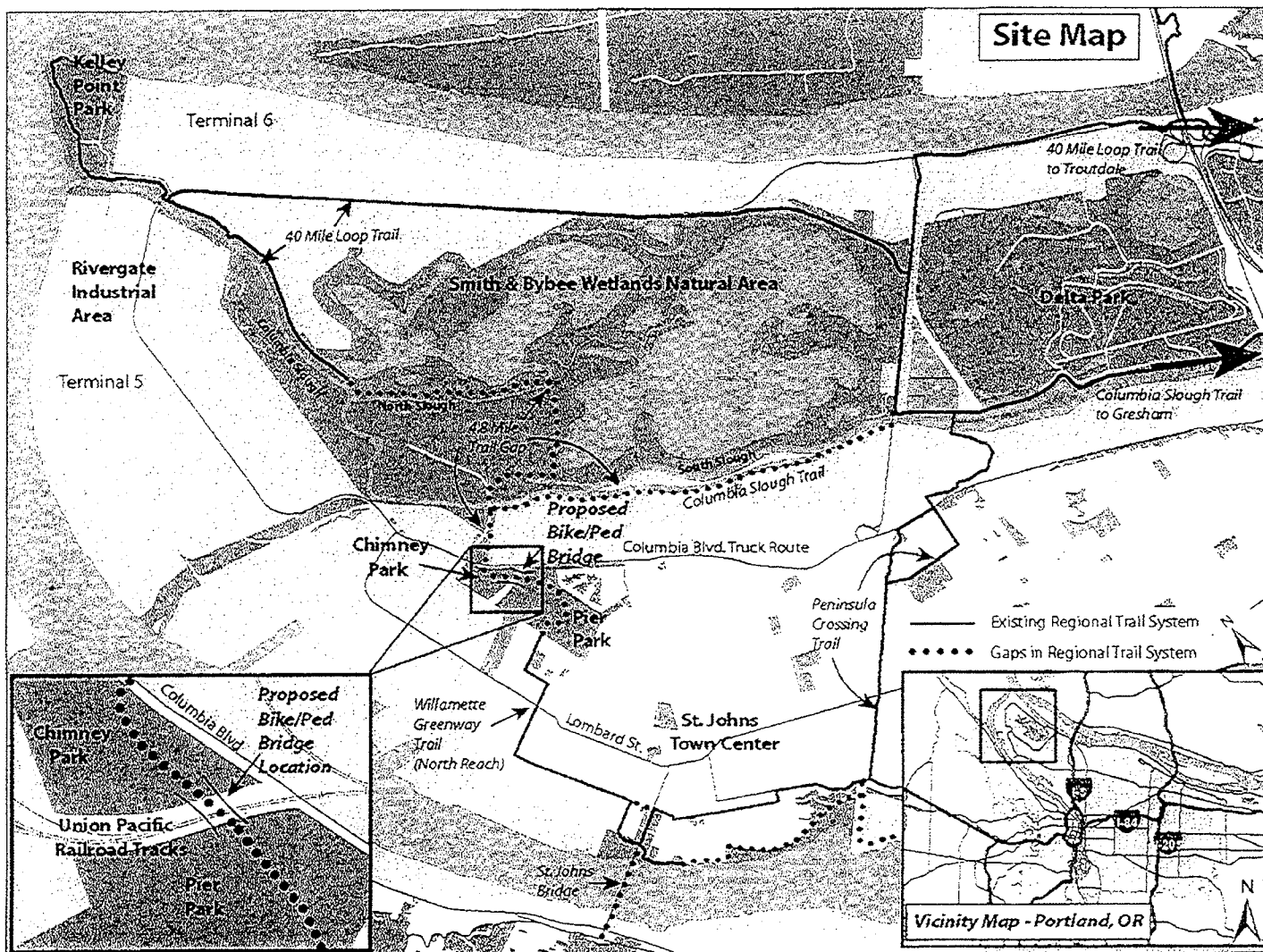


EXHIBIT B

Agreement Number: 26,482

Willamette River Greenway Trail: Chimney Park to Pier Park Bridge

Key Number: 16812

ACKNOWLEDGMENT OF FEDERAL ASSISTANCE

The property and assets under the jurisdiction of City were improved with assistance from the United States Government under an agreement executed between Metro, City and the Oregon Department of Transportation dated _____. Such assistance was provided to Metro and City in reimbursement of costs associated with the construction of a bicycle-pedestrian bridge between Chimney Park and Pier Park as part of the Willamette River Greenway Regional Trail.

The use and disposition of said property is subject to the terms of the above noted agreement, copies of which may be obtained from the Director, Oregon Department of Transportation, and is also subject to 49 CFR Part 18 which may be obtained from the Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, S.W., Washington D.C. 20590.

By: _____

Title: _____

SUBSCRIBED and SWORN to before me this _____ day of _____, 20__

NOTARY PUBLIC FOR OREGON

My commission expires: _____

Forward the completed document to the following:

Oregon Department of Transportation
State Project Liaison
Michele Thom
123 NW Flanders
Portland, OR 97209

EXHIBIT B

Project Description

This Project will involve the design and construction of an approximately 120' bicycle and pedestrian bridge connecting Pier Park and Chimney Park in north Portland near Columbia Boulevard. This bridge project is a component of the Willamette Greenway and part of the 40-Mile Loop, a state recreational trail. The Project will complete the Willamette Greenway and Columbia Slough Trails in North Portland proposed as part of the 4.8-mile Smith and Bybee Natural Area trail system. The Natural Area trail system, recommended by Metro Council in 2005, will provide a combination of multi-modal off-street trail and on-street sidewalks and bike lanes to connect the 2000-acre Smith and Bybee Natural Area to nearby St. Johns town center, neighborhoods, parks, and local and regional trails. The proposed bridge Project will provide a neighborhood connection for bicyclists and pedestrians to access Chimney Park that until this time has only been accessible by automobile. Several neighborhood, local and regional trails currently dead-end at the proposed bridge location. It is important to have the bridge in place prior to future trail implementation. This Project will set the stage to allow residents in a low-income neighborhood, with relatively few opportunities to enjoy nature, to have access not only to the nearby Natural Area, but also to the Columbia River and literally hundreds of miles of regional trails.