

**INTERGOVERNMENTAL AGREEMENT**  
City of Portland, Cully Main Street and Local Street Plans

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation ("ODOT" or "Agency"), and City of Portland ("City" or "Grantee").

**RECITALS**

1. The Transportation and Growth Management ("TGM") Program is a joint program of ODOT and the Oregon Department of Land Conservation and Development.
2. The TGM Program includes a program of grants for local governments for planning projects. The objective of these projects is to better integrate transportation and land use planning and develop new ways to manage growth in order to achieve compact pedestrian, bicycle, and transit friendly urban development.
3. This TGM Grant (as defined below) is financed with federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU") funds. Local funds are used as match for SAFETEA-LU funds.
4. By authority granted in ORS 190.110, state agencies may enter into agreements with units of local government or other state agencies to perform any functions and activities that the parties to the agreement or their officers or agents have the duty or authority to perform.
5. City has been awarded a TGM Grant which is conditional upon the execution of this Agreement.
6. The parties desire to enter into this Agreement for their mutual benefit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**SECTION 1. DEFINITIONS**

Unless the context requires otherwise, the following terms, when used in this Agreement, shall have the meanings assigned to them below:

A. "City's Amount" means the portion of the Grant Amount payable by ODOT to City for performing the tasks indicated in Exhibit A as being the responsibility of City.

B. "City's Matching Amount" means the amount of matching funds which City is required to expend to fund the Project.

C. "City's Project Manager" means the individual designated by City as its project manager for the Project.

D. "Consultant" means the personal services contractor(s) (if any) hired by ODOT to do the tasks indicated in Exhibit A as being the responsibility of such contractor(s).

E. "Consultant's Amount" means the portion of the Grant Amount payable by ODOT to the Consultant for the deliverables described in Exhibit A for which the Consultant is responsible.

F. "Direct Project Costs" means those costs which are directly associated with the Project. These may include the salaries and benefits of personnel assigned to the Project and the cost of supplies, postage, travel, and printing. General administrative costs, capital costs, and overhead are not Direct Project Costs. Any jurisdiction or metropolitan planning organization that has federally approved indirect cost plans may treat such indirect costs as Direct Project Costs.

G. "Federally Eligible Costs" means those costs which are Direct Project Costs of the type listed in Exhibit D incurred by City and Consultant during the term of this Agreement.

H. "Grant Amount" or "Grant" means the total amount of financial assistance disbursed under this Agreement, which consists of the City's Amount and the Consultant's Amount.

I. "ODOT's Contract Administrator" means the individual designated by ODOT to be its contract administrator for this Agreement.

J. "PSK" means the personal services contract(s) executed between ODOT and the Consultant related to the portion of the Project that is the responsibility of the Consultant.

K. "Project" means the project described in Exhibit A.

L. "Termination Date" has the meaning set forth in Section 2.A below.

M. "Total Project Costs" means the total amount of money required to complete the Project.

N. "Work Product" has the meaning set forth in Section 5.I below.

## SECTION 2. TERMS OF AGREEMENT

A. Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been received. This Agreement terminates on June 30, 2012 ("Termination Date").

B. Grant Amount. The Grant Amount shall not exceed \$105,000.

C. City's Amount. The City's Amount shall not exceed \$90,000.

D. Consultant's Amount. The Consultant's Amount shall not exceed \$15,000.

E. City's Matching Amount. The City's Matching Amount is \$14,322 or 12% of the Total Project Costs.

## SECTION 3. DISBURSEMENTS

A. Subject to submission by City of such documentation of costs and progress on the Project (including deliverables) as are satisfactory to ODOT, the City may be reimbursed by ODOT for, or may use as part of the City's Matching Amount, as the case may be, only Direct Project Costs that are Federally Eligible Costs that City incurs after the execution of this Agreement up to the City's Amount. Generally accepted accounting principles and definitions of ORS 294.311 shall be applied to clearly document verifiable costs that are incurred.

B. City shall present reimbursement requests, cost reports, progress reports, and deliverables to ODOT's Contract Administrator no less than every other month. City shall submit reimbursement requests, cost reports for 100% of City's Federally Eligible Costs, and shall be reimbursed at 86.27% up to the City's Amount.

C. ODOT shall make interim payments to City for deliverables identified as being City's responsibility in the approved statement of work set out in Exhibit A within 45 days of satisfactory completion (as determined by ODOT's Contract Administrator) of such deliverables.

D. ODOT reserves the right to withhold payment equal to ten percent (10%) of each disbursement until 45 days after ODOT's Contract Administrator's approval of the

completion report described Section 5.K(2), at which time the balance due to City under this Agreement shall be payable.

E. Within 45 days after the latter of the Termination Date of this Agreement or City's compliance with Section 5.K. below, ODOT shall pay to City the balance due under this Agreement.

F. ODOT shall limit reimbursement of travel expenses in accordance with current State of Oregon Accounting Manual, General Travel Rules, effective on the date the expenses are incurred.

#### **SECTION 4. CITY'S REPRESENTATIONS, WARRANTIES, AND CERTIFICATION**

A. City represents and warrants to ODOT as follows:

1. It is a municipality duly organized and existing under the laws of the State of Oregon.

2. It has full legal right and authority to execute and deliver this Agreement and to observe and perform its duties, obligations, covenants and agreements hereunder and to undertake and complete the Project.

3. All official action required to be taken to authorize this Agreement has been taken, adopted and authorized in accordance with applicable state law and the organizational documents of City.

4. This Agreement has been executed and delivered by an authorized officer(s) of City and constitutes the legal, valid and binding obligation of City enforceable against it in accordance with its terms.

5. The authorization, execution and delivery of this Agreement by City, the observation and performance of its duties, obligations, covenants and agreements hereunder, and the undertaking and completion of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over it or its property or violate or breach any provision of any agreement, instrument or indenture by which City or its property is bound.

6. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of City.

B. As federal funds are involved in this Grant, City, by execution of this Agreement, makes the certifications set forth in Exhibits B and C.

#### SECTION 5. GENERAL COVENANTS OF CITY

A. City shall be responsible for the portion of the Total Project Costs in excess of the Grant Amount. City shall complete the Project; provided, however, that City shall not be liable for the quality or completion of that part of the Project which Exhibit A describes as the responsibility of the Consultant.

B. City shall, in a good and workmanlike manner, perform the work on the Project, and provide the deliverables for which City is identified in Exhibit A as being responsible.

C. City shall perform such work identified in Exhibit A as City's responsibility as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform such work. City shall also be responsible for providing for employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.

D. All employers, including City, 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. City shall ensure that each of its contractors complies with these requirements.

E. City shall not enter into any subcontracts to accomplish any of the work described in Exhibit A, unless it first obtains written approval from ODOT.

F. City agrees to cooperate with ODOT's Contract Administrator. At the request of ODOT's Contract Administrator, City agrees to:

- (1) Meet with the ODOT's Contract Administrator; and
- (2) Form a project steering committee (which shall include ODOT's Contract Administrator) to oversee the Project.

G. City shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code. Without limiting the generality of the foregoing, City expressly agrees to comply with: (1) Title VI of Civil Rights Act of 1964; (2) Title V and Section 504 of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990 and ORS 659A.142; (4) all regulations and administrative rules established pursuant to the foregoing laws; and (5) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

H. City shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City shall maintain any other records pertinent to this Agreement in such a manner as to clearly document City's performance. City acknowledges and agrees that ODOT, the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of City that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts.

City shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

I. (1) All of City's work product related to the Project that results from this Agreement ("Work Product") is the exclusive property of ODOT. ODOT and City intend that such Work Product be deemed "work made for hire" of which ODOT shall be deemed the author. If, for any reason, such Work Product is not deemed "work made for hire", City hereby irrevocably assigns to ODOT all of its rights, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. City shall execute such further documents and instruments as ODOT may reasonably request in order to fully vest such rights in ODOT. City forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

(2) ODOT hereby grants to City a royalty free, non-exclusive license to reproduce any Work Product for distribution upon request to members of the public.

(3) City shall ensure that any work products produced pursuant to this Agreement include the following statement:

“This project is partially funded by a grant from the Transportation and Growth Management (TGM) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), local government, and State of Oregon funds.

The contents of this document do not necessarily reflect views or policies of the State of Oregon.”

(4) The Oregon Department of Land Conservation and Development and ODOT may each display appropriate products on its “home page”.

J. Unless otherwise specified in Exhibit A, City shall submit all final products produced in accordance with this Agreement to ODOT’s Contract Administrator in the following form:

- (1) two hard copies; and
- (2) in electronic form using generally available word processing or graphics programs for personal computers via e-mail or on compact diskettes.

K. Within 30 days after the Termination Date, City shall

- (1) pay to ODOT City’s Matching Amount less Federally Eligible Costs previously reported as City’s Matching Amount. ODOT may use any funds paid to it under this Section 5.K (1) to substitute for an equal amount of federal SAFETEA-LU funds used for the Project or use such funds as matching funds; and
- (2) provide to ODOT’s Contract Administrator, in a format provided by ODOT, a completion report. This completion report shall contain:
  - (a) The permanent location of Project records (which may be subject to audit);
  - (b) A summary of the Total Project Costs, including a breakdown of those Project costs that are reimbursable hereunder and those costs which are being treated by City as City’s Matching Amount;

- (c) A list of final deliverables; and
- (d) City's final disbursement request.

## SECTION 6. CONSULTANT

If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to accomplish the work described in Exhibit A as being the responsibility of the Consultant. In such a case, even though ODOT, rather than City is the party to the PSK with the Consultant, ODOT and City agree that as between themselves:

- A. Selection of the Consultant will be conducted by ODOT in accordance with ODOT procedures with the participation and input of City;
- B. ODOT will review and approve Consultant's work, billings and progress reports after having obtained input from City;
- C. City shall be responsible for prompt communication to ODOT's Contract Administrator of its comments regarding (A) and (B) above; and
- D. City will appoint a Project Manager to:
  - (1) be City's principal contact person for ODOT's Contract Administrator and the Consultant on all matters dealing with the Project;
  - (2) monitor the work of the Consultant and coordinate the work of the Consultant with ODOT's Contract Administrator and City personnel, as necessary;
  - (3) review any deliverables produced by the Consultant and communicate any concerns it may have to ODOT's Contract Administrator; and
  - (4) review disbursement requests and advise ODOT's Contract Administrator regarding payments to Consultant.

## SECTION 7. ODOT'S REPRESENTATIONS AND COVENANTS

A. ODOT certifies that, at the time this Agreement is executed, sufficient funds are authorized and available for expenditure to finance ODOT's portion of this Agreement within the appropriation or limitation of its current biennial budget.



B. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of ODOT.

C. ODOT will assign a Contract Administrator for this Agreement who will be ODOT's principal contact person regarding administration of this Agreement and will participate in the selection of the Consultant, the monitoring of the Consultant's work, and the review and approval of the Consultant's work, billings and progress reports.

D. If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to perform the work described in Exhibit A designated as being the responsibility of the Consultant, and in such a case ODOT agrees to pay the Consultant in accordance with the terms of the PSK up to the Consultant's Amount.

### SECTION 8. TERMINATION

This Agreement may be terminated by mutual written consent of all 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, but not limited to, any of the following conditions:

A. City fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, or fails to perform any of the provisions of this Agreement and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

B. Consultant fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

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

D. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

In the case of termination pursuant to A, B, C or D above, ODOT shall have any remedy at law or in equity, including but not limited to termination of any further disbursements hereunder. Any termination of this Agreement shall not prejudice any right or obligations accrued to the parties prior to termination.

## SECTION 9. GENERAL PROVISIONS

- A. Time is of the essence of this Agreement.
- B. Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to ODOT or City at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed is in effect five (5) days after the date postmarked. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- C. ODOT and City are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons (including but not limited to any Consultant) unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- D. Sections 5(H), 5(I), and 9 of this Agreement and any other provision which by its terms is intended to survive termination of this Agreement shall survive.
- E. The parties agree as follows:
- (a) Contribution.
- If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Grantee ("Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of

the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which ODOT is jointly liable with the Grantee (or would be if joined in the Third Party Claim ), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

With respect to a Third Party Claim for which the Grantee is jointly liable with ODOT (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

(b) Choice of Law; Designation of Forum; Federal Forum.

(1) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(2) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(3) Notwithstanding Section 9.E (b)(2), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 9.E(b)(3) applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section 9.E(b)(3) is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

(c) Alternative Dispute Resolution.

The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

F. This Agreement and attached Exhibits (which are by this reference incorporated herein) 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 modification or change of terms of this Agreement shall bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Budget modifications and adjustments from the work described in Exhibit A must be processed as an amendment(s) to this Agreement and the PSK. No waiver or consent shall be effective unless in writing and signed by the party against whom such waiver or consent is asserted. 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 ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

G. 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.

On December 29, 2008, the Oregon Transportation Commission ("Commission") approved Delegation Order No. 2, which authorizes the Director of ODOT 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 ("STIP") 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.

**City**

*City of Portland*

By: \_\_\_\_\_  
(Official's Signature)

\_\_\_\_\_  
(Printed Name and Title of Official)

Date: \_\_\_\_\_

**ODOT**

STATE OF OREGON, by and through  
its Department of Transportation

By: \_\_\_\_\_  
Barbara Fraser, Interim Division  
Administrator  
Transportation Development Division

Date: \_\_\_\_\_

**Contact Names:**

Debbie Bischoff  
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1900 SW 4th, Suite 7100  
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123 NW Flanders  
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**Exhibit A**  
**TGM 1D-10**  
**City of Portland**  
**Cully Main Street and Local Street Plans**

<b>Name:</b> <b>Address:</b>  <b>Phone:</b> <b>Fax:</b> <b>Email:</b>	<u><b>Agency's Contract Administrator</b></u> Ross Kevin ODOT Region 1 123 NW Flanders T Portland, OR 97209-4037 503-731-8232 503-731-3266 ross.p.kevlin@odot.state.or.us	<b>Name:</b> <b>Address:</b>  <b>Phone:</b> <b>Fax:</b> <b>Email:</b>	<u><b>City's Project Manager</b></u> Debbie Bischoff City of Portland 1900 SW 4 <sup>th</sup> , Suite 7100 Portland, OR 97201 503-823-6946 503-823-4571 Debbie.Bischoff@portlandoregon.gov
<b>Name:</b> <b>Address:</b>  <b>Phone:</b> <b>Fax:</b> <b>Email:</b>	<u><b>Consultant's Project Manager</b></u> Mary Bosch Marketek, Inc. 9220 SW Barbur Blvd., Ste 119-220 Portland, OR 97219 503-638-1615 503-638-6982 marketekmb@aol.com		

This statement of work describes the responsibilities of all entities involved in this cooperative project.

The work order contract (for the purposes of the quoted language below the "WOC") with the work order consultant ("Consultant") shall contain the following provisions in substantially the form set forth below:

**"PROJECT COOPERATION**

This statement of work describes the responsibilities of the entities involved in this cooperative Project. In this Contract (PSK), the Consultant shall only be responsible for those deliverables assigned to the Consultant. All work assigned to other entities are not Consultant's obligations under this PSK, but shall be obtained by Agency through separate intergovernmental agreements which contain a statement of work that is the same as or similar to this statement of work. The obligations of entities in this statement of work other than the Consultant are merely stated for informational purposes and are in no way binding, nor are the named entities parties to this PSK. Any tasks or deliverables assigned to a subcontractor shall be construed as being the responsibility of the Consultant.

Any Consultant tasks or deliverables which are contingent upon receiving information, resources, assistance, or cooperation in any way from another entity as described in this statement of work shall be subject to the following guidelines:

1. At the first sign of non-cooperation, the Consultant shall provide written notice (email acceptable) to Oregon Department of Transportation (Agency) Contract Administrator of any deliverables that may be delayed due to lack of cooperation by other entities referenced in this statement of work.
2. Contract Administrator shall contact the non-cooperative entity or entities to discuss the matter and attempt to correct the problem and expedite items determined to be delaying the Consultant.

If Consultant has followed the notification process described in item 1, and Agency finds that delinquency of any deliverable is a result of the failure of other referenced entities to provide information, resources, assistance, or cooperation, as described in this statement of work, the Consultant will not be found in breach of contract. Contract Administrator will negotiate with Consultant in the best interest of the State, and may amend the delivery schedule to allow for delinquencies beyond the control of the Consultant.”

### **Project Purpose and Transportation Relationship and Benefit:**

NE Cully Boulevard (including a segment of NE Killingsworth Street), designated as a Main Street in the Metro Region 2040 Growth Concept Plan and the City of Portland’s (City) Transportation System Plan, is hindered by land use and zoning that does not match the needs or desires of the community nor the characteristics of a main street. The Project will develop a rezoning proposal for the study area that will promote much needed commercial and other non-residential community-serving uses while encouraging a vibrant center of community activity. The Project will also assess current and future market demands of the main street and consider future uses for two key properties that are within the main street area to inform land use recommendations.

### **Background and Study Area:**

The Cully Main Street is located in the center of the Cully neighborhood, roughly between NE 42<sup>nd</sup> and NE 82<sup>nd</sup> Avenues, north of NE Fremont and south of NE Columbia. The main street also includes the NE Killingsworth corridor from NE 60<sup>th</sup> to Cully Boulevard. Overall, this is a large neighborhood of over 14,000 residents in central northeast Portland. One of the notable features of this predominantly residential neighborhood is the lack of street connectivity and complete streets. Most blocks in the Cully neighborhood do not meet street connectivity standards and many residential streets are substandard or completely unimproved. The

transportation system aspect of the Project will consider the residential portion of the Cully neighborhood from NE 42<sup>nd</sup> to NE 82<sup>nd</sup> and from NE Fremont and Prescott Streets to NE Columbia Blvd. See attached map for main street and transportation study areas.

The goal is to enhance multimodal transportation safety, travel options, and access to neighborhood activity centers<sup>1</sup> by examining alternative maintenance, design and funding solutions for substandard local streets, consistent with City 's local street and expanded maintenance options policies, and by evaluating existing transit classifications (in the Transportation System Plan), access and service. Transportation solutions identified in the local street plan will address the intent outlined in the Transportation Planning Rule that pedestrian-friendly areas (such as Main Streets) be "highly convenient for a variety of modes, including walking, bicycling and transit."<sup>2</sup> The results of this work will offer solutions to consider elsewhere in the City.

The attached Cully Main Street Area map defines boundaries for land use and transportation study areas.

#### **Project Objectives:**

- Provide more opportunities for community-desired neighborhood-serving commercial (and mixed-use) development by rezoning the Cully Main Street area while ensuring that transportation services are adequate
- Develop local street connectivity and street design options and financing recommendations that can be used to implement community prioritized local street improvements and enhance local street connectivity and multi-modal access and safety
- Evaluate street connectivity and consider alternatives for introducing new street and pathway connections by identifying local circulation needs, determining community-prioritized street improvements and addressing safety issues
- Document best practices (City of Portland and international) in local street maintenance, design, financing and develop recommendations to facilitate implementation of the local street system
- Evaluate transit service needs and transit-supportive features in the Cully neighborhood and identify alternatives for improving access to bus stops
- Produce adoptable deliverables such as Comprehensive Plan Map and Zoning Map amendments to implement the community desired Cully Main Street, consistent with other project objectives
- Assure adequate and meaningful public participation opportunities to ensure development of deliverables endorsed by the community

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<sup>1</sup> "Neighborhood activity centers" includes, but is not limited to, existing or planned schools, parks, shopping areas, transit stops or employment centers. OAR 660-012-0045 (3)

<sup>2</sup> Transportation Planning Rule (OAR 660-012-0000) Purpose 3(c)



- Assure coordination internally among City bureaus and externally with other agency stakeholders
- Comply with and implement applicable state, regional and local plans and policies

## **Task 1: Project Management and Public Involvement**

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### **Objectives**

- Assure the Project is effectively managed
- Ensure adequate, meaningful public participation and input

### **Methodology**

1. **Project Management** - City shall manage and coordinate overall planning process and deliverables described in the scope of work. City shall prepare Quarterly Status Reports and invoices and the Project Close-out report as specified in the Intergovernmental Agreement

City shall maintain effective communication and participation with Portland Bureau of Transportation, Bureau of Planning and Sustainability, Bureau of Environmental Services, Oregon Department of Transportation (ODOT), Metro, Tri-Met and other agencies throughout the Project through participation on the Project Working Group (PWG), through phone conversations, emails and deliverable reviews.

City shall coordinate public involvement program with other related activities in the general vicinity.

2. **PWG Roster** - City shall establish and coordinate PWG of relevant City staff and community representatives to review and comment on project deliverables and participate at project events. City shall prepare roster with contact information.
3. **Community Outreach and Engagement Plan** – City shall develop a Community Outreach and Engagement Plan tailored to the specific community composition in and near the Project Area to meet Title VI, Civil Rights goals. Community Outreach and Engagement Plan must identify community composition, environmental justice and social equity considerations, including concentration of transportation disadvantaged communities and non-native English speaking populations and their native language. Community Outreach and Engagement Plan must identify outreach strategies specific to these communities, including community newspapers and other media outlets, community associations, groups or congregations, meeting locations and contacts.
4. **Community Outreach Status Report** – City shall complete a Community Outreach Status Report at end of Project documenting outreach efforts and accomplishments.

### **City Deliverables**

- A. Project Management.
- B. PWG Roster
- C. Community Outreach and Engagement Plan

## D. Community Outreach Status Report

City Budget: \$5,642

**Task 2: Existing Conditions**

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**Objectives**

- Inventory current land uses, transportation systems, and local economic conditions
- Review public policies, plans, street design standards, regulatory requirements and previous studies/data that pertain to the study area, to document relevant issues and conditions
- Confirm community perspectives on and aspirations for the Cully Main Street Area
- Establish the market demand for local-serving commercial uses in the Cully Main Street Area

**Methodology**

1. **Land Use Study Area Base Map** – City shall prepare Land Use Study Area Base Map depicting property lines, existing zoning and land uses, building footprints, and lots in contiguous ownership in ArcInfo-compatible Geographic Information System (GIS) format.
2. **Transportation Study Area Base Map** – City shall prepare Transportation Study Area Base Map in ArcInfo-compatible GIS format. Transportation Study Area Base Map must depict street connectivity, street classifications, property lines, substandard streets, sidewalks, improved bikeways, marked crosswalks, curbs, signals, bus routes and access to bus stops.

(Note: The Land Use and Transportation Study Area Base Maps may not be displayed at the same scale but all of the GIS information presented will be consistently presented in an overlay format.)

3. **Cully Main Street Area Roll and Stroll** – City shall advertise and lead a Roll and Stroll to learn community concerns and future ideas for the main street area. A Roll and Stroll is a tour accessible to all modes including wheelchairs and will be held at a walkable pace. City shall document community input received in a summary that must include photos and illustrations.
4. **Existing Conditions Memo** – City shall prepare an Existing Conditions Memo summarizing major land use and transportation features in the Cully Main Street and Transportation Study Areas, as well as plans, policies and previous studies pertaining to the study areas. At a minimum Existing Conditions Memo must include the Metro Regional Transportation Plan and Urban Growth Management Functional Plan, the

Oregon Highway Plan, and City's Comprehensive Plan, Transportation System Plan and zoning code. Street classification, street connectivity (policy and existing conditions) and street design standards must also be reviewed.

City shall revise Existing Conditions Memo based on comments from the PWG at PWG Meeting #1.

5. **Base Case Traffic Analysis Memo** – City shall prepare Base Case Traffic Analysis Memo, an analysis of future no-build conditions in transportation study area. City shall acquire two-hour PM peak traffic counts at up to five intersections potentially impacted by rezoning of the land use study area, and similar AM counts if available. Existing traffic counts may be used due to ongoing road construction in the area that may skew new counts. City shall calculate future year 2035 traffic volumes, using peak-hour volumes gathered as described above in combination with the Metro travel demand forecast model for the PM peak periods. Peak-hour volumes must be post-processed using National Cooperative Highway Research Program Report 255 guidelines. A Year 2000 (as updated) Highway Capacity Manual-based analysis program like Synchro or HCS, must be used to analyze future conditions for the horizon year.

Base Case Traffic Analysis Memo must address the following:

- An evaluation of intersection level-of-service for city intersections.
- For specified intersections on ODOT facilities and other intersections identified by ODOT (up to five total), performance must be indicated using volume/capacity (v/c), including an evaluation of the 95<sup>th</sup> percentile queues. Intersection v/c ratio, not maximum movement v/c, must be used.
- Analysis of other critical access intersections must be conducted using a methodology determined by the City.
- A comparison of future traffic conditions with performance standards in the Portland Transportation System Plan, Metro Regional Transportation Plan, Oregon Highway Plan and other relevant state, regional and local criteria.
- Identification of specific deficiencies in the Study Area in terms of level-of-service and v/c, queuing, safety and multi-modal circulation and access.
- Traffic analysis results.
- Existing property access that contributes to capacity and safety problems
- Documentation of existing transit service and accessibility.

City shall revise Base Case Traffic Analysis Memo based on comments from the PWG.

6. **Business District Redevelopment Analysis Report**– Consultant shall prepare a Business District Redevelopment Analysis Report. The analysis must include a Cully business inventory, analysis of retail and office/service businesses that can be supported

in the land use project area over the 25-year plan horizon based primarily on Cully neighborhood household and business expenditures, and a commercial land needs analysis to generally quantify the land required for businesses that can be supported. To account for market competition, the analysis must consider competing business districts immediately adjacent to the study area and address the likelihood that the Cully business district could attract businesses requiring a broader (multi-neighborhood or regional) market area. The analysis must identify supportable businesses for the land use study area, and describe them by type and likely size. To assess commercial land demand, the analysis must estimate likely building square-footage and land area supportable businesses would occupy. Additionally, the analysis must identify parcels within the study area whose size or location may be appropriate to accommodate key businesses, including large parcels at the northern end of the land use study area. City shall coordinate with the Consultant to provide information on applicable zoning categories, and on development regulations as they affect the size of buildings and buildable parcels. The purpose of the commercial land needs analysis is to ensure that buildable lands for commercial use within the district are sufficient to accommodate retail and office/service businesses that can be supported in the land use project area over the 25-year plan horizon. The Consultant shall make use of existing reports including the Cully-Concordia Community Assessment (2008), Cully Main Street: A Plan for Community-Serving Improvements, PSU Planning Workshop report (2009) and City of Portland Commercial Corridor studies. The Consultant shall identify economic and demographic forecasts and trends, and document sources, assumptions, methodology and results. City shall provide the Consultant with estimates of future population/household growth, Buildable Lands Inventory, and other data created as part of the City's Comprehensive Plan update. (Note: The scope of this subtask is focused on retail and service uses [personal/professional] and does not include residential or office supply/demand analysis. In addition, the work emphasizes market analysis and land demand potential, and does not include site-specific development pro forma analysis.)

Consultant shall revise Business District redevelopment Analysis Report to reflect comments from the PWG.

7. **PWG Meeting #1** – City shall facilitate PWG Meeting #1 to present maps, Existing Conditions Memo, Traffic Analysis Technical Memo and Business District Redevelopment Analysis Report. Consultant shall attend to present the Business District Redevelopment Analysis Report. City shall present other deliverables and document participant comments.

#### **City Deliverables**

- A. Land Use Base Map (2.1)
- B. Transportation Study Area Base Map (2.2)
- C. Cully Main Street Area Roll and Stroll (2.3)

- D. Existing Conditions Memo (2.4)
- E. Base Case Traffic Analysis Memo (2.5)
- F. PWG Meeting #1 (2.7)

**City Budget:** \$21,371

#### **Consultant Deliverables**

- A. Business District Redevelopment Analysis Report (2.6)
- B. PWG Meeting #1 (2.7)

### **Task 3: Needs, Opportunities and Constraints**

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#### **Objectives**

- Identify needs and constraints to address in the Cully Main Street Area such as underutilized land and small/odd-shaped parcels, safety, traffic congestion and infrastructure deficiencies
- Identify opportunities to promote redevelopment, main street vitality and the use of alternative travel modes
- Identify opportunities to address transportation needs in the Cully, including transportation system connectivity and multimodal access to main street retail, transit, and neighborhood activity centers
- Identify constraints to redevelopment and transportation improvements, and where possible, potential strategies to overcome constraints
- Identify tools and best practices that may help achieve overall project objectives
- Understand factors that may influence land use and transportation solutions
- Identify criteria for developing or evaluating new land uses for the Cully Boulevard corridor
- Identify potential solutions for improving the Cully neighborhood street network, and the advantages, disadvantages and trade-offs of each solution

#### **Methodology**

1. **Land Use Needs, Opportunities and Constraints Memo** - City shall prepare a Land Use Needs, Opportunities and Constraints Memo discussing factors to be considered in identifying new plan and zone designations in the land use study area. The Land Use Needs, Opportunities Memo must:
  - consider community desires for neighborhood-supportive uses, and the results of the business district redevelopment analysis and other Task 2 deliverables.
  - include a general discussion explaining why each identified factor constitutes a need, opportunity or constraint, and a summary of potential strategies for taking advantage of opportunities and avoiding or minimizing constraints.

- discuss plan and zone designations that may be appropriate for desired land uses, and must use text and graphics in sufficient detail to inform public discussion of potential solutions.
  - establish criteria to guide the development of land use solutions in the subsequent task.
- City shall revise Land Use Needs, Opportunities and Constraints Memo to reflect comments from the PWG and Open House.
2. **Transportation Needs, Opportunities, Constraints and Tools Memo** – City shall prepare a Transportation Needs, Opportunities, Constraints and Tools Memo discussing factors to be considered in developing local street solutions in the transportation study area. The Memo must:
- identify transit needs and factors supporting additional transit service, needs and deficiencies in the local street system, and opportunities and constraints for addressing local street needs in terms of maintenance, financing, and improving substandard local streets.
  - identify and describe tools for local street design and implementation to address identified needs and deficiencies, such as methods to audit neighborhood pedestrian/bike routes, potential new accessway connections, street maintenance options, lower-cost roadway designs, and alternative funding mechanisms.
  - discuss the applicability, pros, cons and trade-offs for each tool, and establish criteria for evaluating and selecting local street solutions in the subsequent task.
- City shall revise the Memo to reflect comments from the PWG and Open House.
3. **PWG Meeting #2** - City shall facilitate PWG Meeting #2 to present findings of the Land Use Needs, Opportunities and Constraints Memo and Transportation Needs, Opportunities, Constraints, and Tools Memo. City shall present remaining information and document participant comments.
4. **Open House #1** - City shall facilitate Open House #1 to present a summary of the Existing Conditions Memo, Business District Redevelopment Analysis Report, and the findings of the Land Use Needs, Opportunities and Constraints Memo and the Transportation Needs, Opportunities, Constraints and Tools Memo. Consultant shall attend to present the Business District Redevelopment Analysis Report. City shall present remaining deliverables and document participant comments.

**City Deliverables:**

- A. Land Use Needs, Opportunities, and Constraints Memo (3.1)
- B. Transportation Needs, Opportunities, Constraints and Tools Memo (3.2)
- C. PWG Meeting #2 (3.3)
- D. Open House #1 (3.4)

**City Budget:** \$27,546

**Consultant Deliverables:**

## A. Open House #1 (3.4)

**Task 4: Developing Solutions**

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**Objectives**

- Develop a land use alternative for Cully Main Street Area redevelopment including the sites north of NE Killingsworth Street, considering community desires, project objectives, and needs, opportunities and constraints
- Develop a range of local street design alternatives and potential funding methods.
- Develop and evaluate a set of local street connectivity solutions that seek to complete the bicycle and pedestrian transportation systems and improve bicycle, pedestrian, transit and local vehicular access

**Methodology**

1. **Land Use Solutions Memo** - City shall prepare a Land Use Solutions Memo describing one or two land use alternatives for the land use study area, based on needs, opportunities and constraints, land use criteria, and community input. If two alternatives are developed, the Land Use Solutions Memo must use the criteria to evaluate each to identify a recommended alternative. If one alternative is developed, the Land Use Solutions Memo must apply the criteria as guidance to identify a single, optimal solution. Alternatives must be described in terms of plan and zone designations. The Land Use Solutions Memo must document alternatives in text and graphics, and describe how criteria were applied toward the alternative(s). City shall revise Land Use Solutions Memo based on comments from the PWG and Open House #2.
2. **Transportation Impact Analysis Memo** -- City shall prepare Transportation Impact Analysis Memo to assess traffic operations for up to one land use alternative identified in the Land Use Solutions Memo for the future year 2035, and recommend transportation system improvements to accommodate potential new land uses. City shall calculate and distribute additional trips from the land use alternatives into the transportation system. A Year 2000 (as updated) Highway Capacity Manual-based program like Synchro or HCS. must be used to analyze future conditions. The 95<sup>th</sup> percentile queues must be evaluated for all Base Case Traffic Analysis Memo intersections on ODOT facilities. The American Association of State Highway and Transportation Officials two-minute rule must be used for queue calculations at all unsignalized study intersections. Analysis outputs must be expressed in intersection delay and v/c for all signalized intersections, and maximum approach and movement delay and v/c for all unsignalized intersections, and these outputs compared to performance standards in the Portland Transportation System Plan, Oregon Highway Plan and Metro Regional Transportation Plan. For all locations where the analysis shows a significant traffic impact per the Transportation

Planning Rule, City shall develop and analyze mitigation measures so the land use alternative(s) can be shown to comply with the Transportation Planning Rule. Memo must include planning-level cost estimates for each mitigation measure. City shall revise Transportation Impact Analysis Memo based on comments from the PWG and Open House #2.

3. **Local Street Solutions Memo** – Based on information in the Transportation Needs, Opportunities, Constraints and Tools Memo, City shall prepare a Local Street Solutions Memo. The Local Street Solutions Memo must include a street and accessway plan to improve network connectivity in the transportation study area, maintenance solutions for substandard streets as a potential alternative to building new streets, funding mechanisms evaluating options to pay for street maintenance and improvements, and recommended street design alternatives to address challenges to implementation, such as construction cost, right-of-way needs, engineering standards and stormwater requirements. City shall revise Local Street Solutions Memo based on comments from the PWG and Open House #2.
4. **PWG Meeting #3** - City shall facilitate PWG Meeting #3 to present findings from the Land Use Solutions, Transportation Impact Analysis and Local Street Solutions memos and document participant comments.
5. **Open House #2** - City shall facilitate Open House #2 to present the Land Use Solutions, Transportation Impact Analysis and Local Street Solutions memos. City shall present the Task 4 deliverables and document participant comments.

#### City Deliverables:

- A. Land Use Solutions Memo (4.1)
- B. Transportation Impact Analysis Memo (4.2)
- C. Local Street Solutions Memo (4.3)
- D. PWG Meeting #3 (4.4)
- E. Open House #2 (4.5)

City Budget: \$29,741

### **Task 5: Final Plan and Implementation**

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#### Objectives

- Refine the developed and evaluated solutions into a set of implementation strategies that meet the overall objectives of the project and reflect community input

#### Methodology

1. **Implementation Report** – City shall prepare an adoption-ready Implementation Report. The Implementation Report implements the recommended land use plan for the land use



study area, and transportation solutions for the transportation study area, and must consist of:

- Findings and recommendations for comprehensive plan map, zoning map and Transportation System Plan amendments
- Street plan recommendations on prioritized substandard street connections, local street design guidance, maintenance options for unimproved streets, and funding mechanisms for local street improvements

Implementation Report must be revised based on comments from the PWG.

2. **PWG Meeting #4** - City shall facilitate PWG Meeting #4 to present the findings and recommendations of the Implementation Report. City shall present the deliverables and document participant comments.

**City Deliverables:**

- A. Implementation Report (5.1)
- B. PWG Meetings #4 (5.2)

**City Budget:** \$20,022

**City Budget**

• Portland Bureau of Transportation Supervisor, 27 hrs, \$118.36/hr	\$3,196
• Transportation Planner, 373 hrs, \$90.83/hr	\$33,880
• Modeler, 134 hrs, \$105.04/hr	\$14,075
• Intern, 92 hrs, \$32.14/hr	\$ 2,957
• Engineer, 40 hrs, \$125.02/hr	\$ 5,001
• Street Design/LID Staff, 30 hrs, \$95.23/hr	\$ 2,857
• Senior Planner, 236 hours, \$52.01/hr	\$12,274
• Planning Intern, 267 hours, \$12.00/hr	\$ 3,204
• Community Planner 1, 736 hours, \$35.11/hour	\$25,841
• Miscellaneous, Translation and Interpretation	<u>\$ 1,037</u>
<b>Total</b>	<b><u>\$104,322</u></b>

City Budget by Task

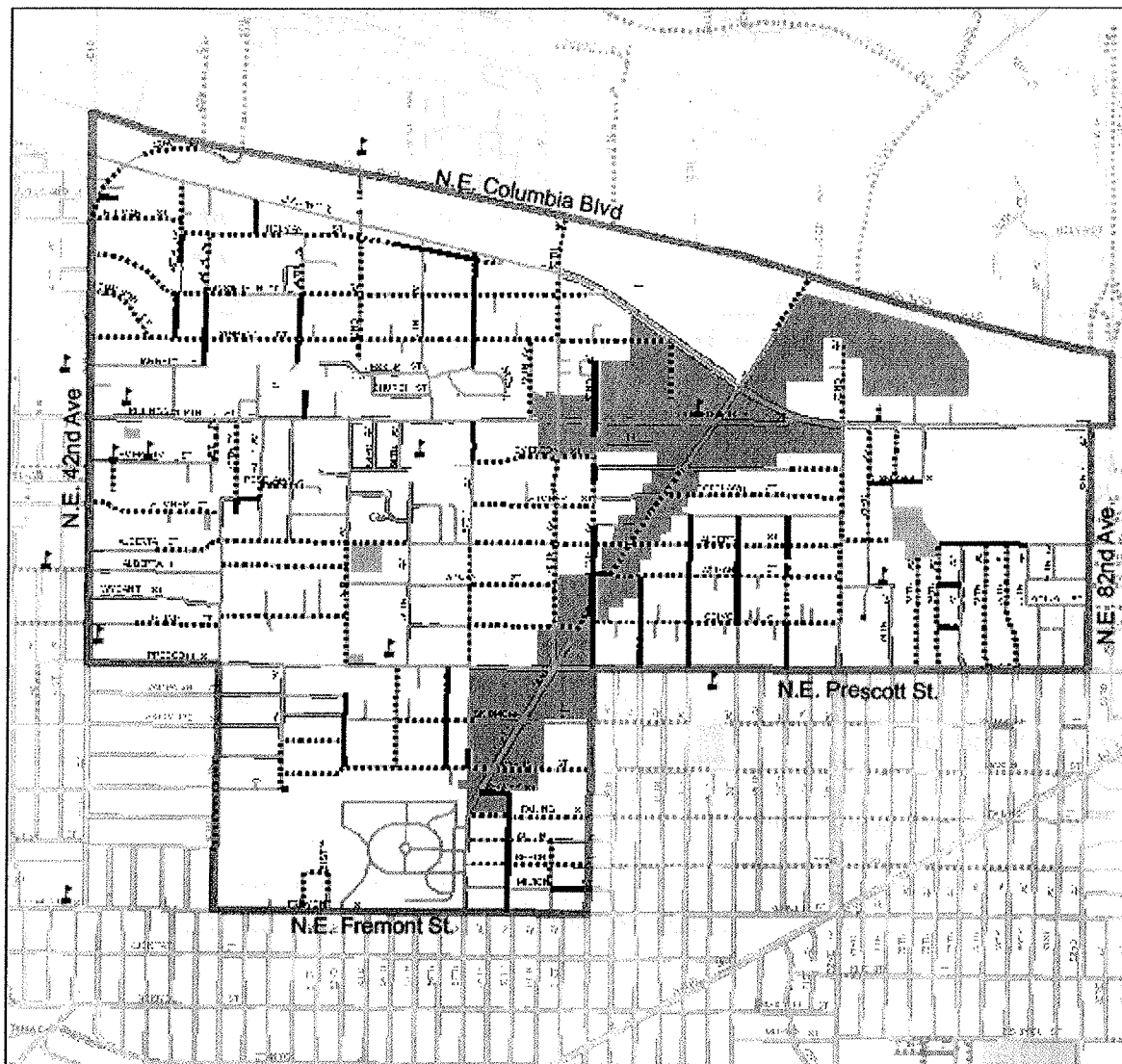
Task 1	\$5,642
Task 2	\$21,371
Task 3	\$27,546
Task 4	\$29,741
Task 5	\$20,022
<b>Total</b>	<b>\$104,322</b>

**PROJECT SCHEDULE**

<i>Task</i>	<i>Completion (Months from Notice to Proceed)</i>
<b>1 Project Management and Public Involvement</b>	Ongoing
<b>2 Existing Conditions</b>	2
<b>3 Needs, Opportunities and Constraints</b>	6
<b>4 Developing Solutions</b>	9
<b>5 Final Plan/Implementation</b>	12

## CONSULTANT AMOUNTS PER DELIVERABLE

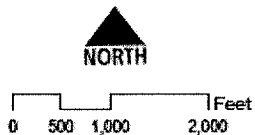
<i>Task</i>	<i>Description</i>	<i>Total Fixed Amount Payable to Consultant Per Deliverable</i>	<i>Total Amount Per Task</i>
1	<b>Project Management and Public Involvement</b>		
2	<b>Existing Conditions</b>		
	Business District Redevelopment Analysis Report	\$13,000	
	PWG Meeting #1	\$1,000	
	<b>Subtotal</b>		<b>\$14,000</b>
3	<b>Needs, Opportunities and Constraints</b>		
	Open House #3	\$1,000	
	<b>Subtotal</b>		<b>\$ 1,000</b>
4	<b>Developing Solutions</b>		
5	<b>Final Plan and Implementation</b>		
	<b>Project Total</b>	<b>\$15,000</b>	<b>\$15,000</b>



### Cully Main Street TGM Project

- Schools
- Transportation Study Area
- Unimproved Right-of-Way
- Substandard Street
- Sidewalks
- Streets
- Main Street Study Area
- Parks

November 12, 2010



City of Portland Bureau of  
**Planning & Sustainability**  
 Sam Adams, Mayor | Susan Anderson, Director

**EXHIBIT B (Local Agency or State Agency)****CONTRACTOR CERTIFICATION**

Contractor certifies by signing this contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**AGENCY OFFICIAL CERTIFICATION (ODOT)**

Department official likewise certifies by signing this contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**EXHIBIT C**

Federal Provisions  
Oregon Department of Transportation

**I. CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION**

Contractor certifies by signing this contract that to the best of its knowledge and belief, it and its principals:

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;</li> <li>2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a</li> </ul> | <p>criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;</p> |
|---|--|

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

#### EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this contract, the Contractor is deemed to have signed this certification.

#### II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS

1. By signing this contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Oregon Department of Transportation determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous

certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.

4. The Contractor shall provide immediate written notice to the Department to whom this proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by submitting this proposal that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

### III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

#### **Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is

suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**IV. EMPLOYMENT**

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranting, Department shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be

entitled to rely on the accuracy, competence, and completeness of Contractor's services.

**V. NONDISCRIMINATION**

During the performance of this contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract. Contractor, with regard to the work performed after award and prior to completion of the contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contract covers a program set forth in Appendix B of the Regulations.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this contract, Contractor agrees as follows:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment,



without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. **Information and Reports.** Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
  5. **Sanctions for Noncompliance.** In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
    - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
    - b. Cancellation, termination or suspension of the agreement in whole or in part.
  6. **Incorporation of Provisions.** Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such

direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

#### VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

#### DBE POLICY STATEMENT

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this contract.

**Required Statement For USDOT Financial Assistance Agreement.** If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Oregon Department of Transportation (ODOT) and its contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 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, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither ODOT nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ODOT deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

**DBE Definition.** Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

#### CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL   0   %

By signing this contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Request for Proposal/Qualification for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

#### VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. 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.

2. 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 agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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 Section 1352, Title 31, U. S. Code. 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.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING ODOT'S  
DBE PROGRAM REQUIREMENT  
CONTACT OFFICE OF CIVIL RIGHTS  
AT (503)986-4354.

EXHIBIT D ELIGIBLE PARTICIPATING COST
DESCRIPTION
<b>PERSONNEL SERVICES</b>
<i>Salaries</i> - Straight time pay for regular working hours in a monthly period. Includes standard labor distributions like Social Security Taxes, Workers' Compensation Assessments and Medical, Dental, Life Insurance. Excludes mass transit tax, vacation leave, sick leave and compensatory time taken.
<i>Overtime</i> - Payments to employees for work performed in excess of their regular work shift.
<i>Shift Differential</i> - Payments to employees, in addition to regular pay, for shift differential work as described in labor contracts or Personnel Rules.
<i>Travel Differential</i> - Payments to employees, in addition to regular pay, for travel time to and from work on projects in excess and beyond an 8 hour day as described in labor contracts or Personnel Rules.
<b>SERVICES AND SUPPLIES</b>
<b>In-State Travel - Per Rates Identified in State Travel Handbook</b>
<i>Meals &amp; Misc.</i> - Payment for meals incurred while traveling within the State of Oregon.
<i>Lodging &amp; Room Tax</i> - Payment for lodging, including room taxes, incurred while traveling within the State of Oregon. Fares, Taxi, Bus, Air, Etc.
<i>Per Diem</i> - Payment for per diem, incurred while traveling within the State of Oregon.
<i>Other</i> - Payment for other miscellaneous expense, incurred while traveling within the State of Oregon.
<i>Private Car Mileage</i> - Payment for private car mileage while traveling within the State of Oregon.
<b>Office Expense</b>
<i>Direct Project Expenses Including:</i>
<i>Photo, Video &amp; Microfilm Supplies</i> - Payment for photography, video and microfilm supplies such as film for cameras, blank video tapes, storage folders, etc.
<i>Printing, Reproduction &amp; Duplication</i> - Expenditures for services to copy, print, reproduce and/or duplicate documents.
<i>Postage</i> - Payment for direct project postage.
<i>Freight &amp; Express Mail</i> - Payment for direct project freight services on outgoing shipments.
<b>Telecommunications</b>
<i>Phone Toll Charges (long-distance)</i> - Payment for telephone long distance charges.
<b>Publicity &amp; Publication</b>
<i>Publish &amp; Print Photos</i> - Payment for printing and publishing photographs to development of publicity and publications.
<i>Conferences</i> (costs to put on conference or seminars)
<b>Equipment \$250 - \$4,999</b>
NOT ELIGIBLE
<b>Employee Training, Excluding Travel</b>
NOT ELIGIBLE
<b>Training In-State Travel</b>
NOT ELIGIBLE
<b>CAPITOL OUTLAY</b>
NOT ELIGIBLE