

EXHIBIT A
M.C. & A. 27,112
PROJECT LOCATION MAP

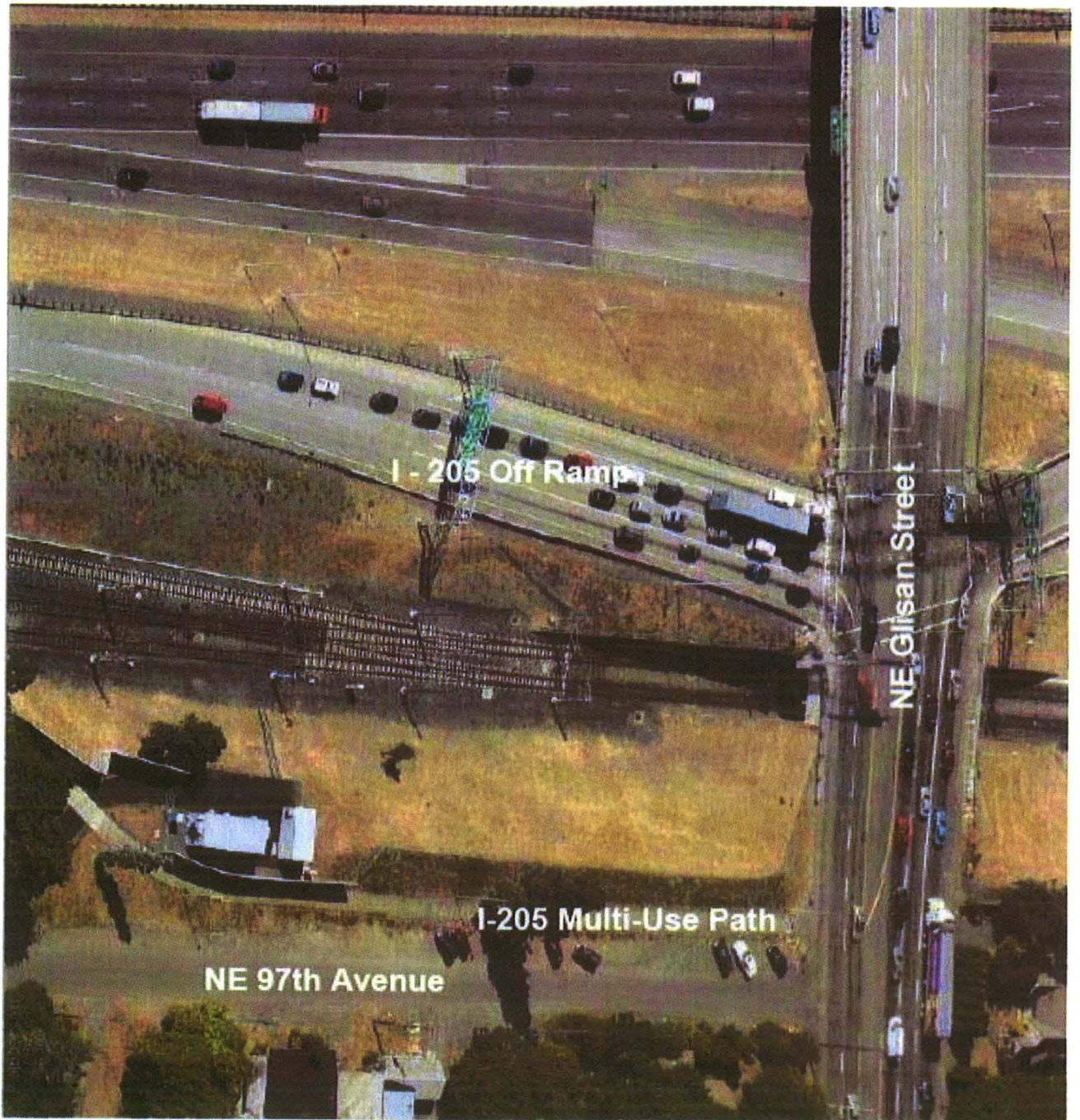


EXHIBIT B
M.C. & A. 27,112
PROJECT Scope, Schedule and Budget

EXHIBIT B

DIRECT CITY COSTS

NO.	ITEMS OF WORK AND MATERIALS	UNIT PRICE	UNIT	CITY QUANTITY	CITY AMOUNT
Bid Item 3	TEMPORARY SIGNS	\$ 23.41	SQFT	128,000	\$ 2,996.48
Bid Item 5	TEMPORARY BARRICADES, TYPE III	\$ 199.00	EACH	5,000	\$ 995.00
Bid Item 19	FLAGGERS	\$ 44.48	HOUR	80,000	\$ 3,558.40
Bid Item 21	TEMPORARY CL-6R CHAIN LINK FENCE	\$ 9.36	FOOT	115,000	\$ 1,076.40
Bid Item 25	CONSTRUCTION ENTRANCES	\$ 1,404.72	EACH	3,000	\$ 4,214.16
Bid Item 27	SEDIMENT FENCE, UNSUPPORTED	\$ 3.51	FOOT	2,030,000	\$ 7,125.30
Bid Item 28	INLET PROTECTION	\$ 105.35	EACH	2,000	\$ 210.70
Bid Item 49	GENERAL EXCAVATION	\$ 24.58	CUYD	1,312,225	\$ 32,254.48
Bid Item 53	12 INCH SUBGRADE STABILIZATION	\$ 15.22	SOYD	264,200	\$ 4,021.12
Bid Item 58	SUBGRADE GEOTEXTILE	\$ 1.76	SOYD	2,642,000	\$ 4,649.92
Bid Item 71	STORMWATER CURB EXTENSIONS	\$ 20.00	SQFT	3,956,667	\$ 79,133.33
Bid Item 77	10 INCH PIPE, HDPE ASTM F714 SDR 26 BEDDING TYPE D	\$ 88.97	FOOT	42,000	\$ 3,736.74
Bid Item 90	CONCRETE INLETS, TYPE CG-2	\$ 1,521.78	EACH	2,000	\$ 3,043.56
Bid Item 95	CONCRETE INLETS, TYPE METAL DIRECT	\$ 200.00	EACH	12,000	\$ 2,400.00
Bid Item 98	CONCRETE INLETS, TYPE PB	\$ 550.00	EACH	9,000	\$ 4,950.00
Bid Item 101	ADJUSTING BOXES	\$ 280.94	EACH	12,000	\$ 3,371.28
Bid Item 102	CONNECTION TO EXISTING STRUCTURES	\$ 500.00	EACH	2,000	\$ 1,000.00
Bid Item 105	MINOR ADJUSTMENT OF MANHOLES	\$ 790.16	EACH	2,000	\$ 1,580.32
Bid Item 131	AGGREGATE BASE	\$ 29.27	TON	1,216,867	\$ 35,611.83
Bid Item 133	LEVEL 2, 1/2 INCH DENSE, MH-MAC MIXTURE	\$ 85.81	TON	450,000	\$ 38,614.50
Bid Item 139	EXTRA FOR ASPHALT APPROACHES	\$ 567.74	EACH	4,000	\$ 2,270.96
Bid Item 140	PLAIN CONCRETE PAVEMENT, UNDOVELLED, 6 INCH THICK	\$ 64.38	SOYD	73,333	\$ 4,721.20
Bid Item 145	CONCRETE CURBS, CURB AND GUTTER	\$ 26.92	FOOT	636,600	\$ 17,137.27
Bid Item 146	CONCRETE CURBS, KEYED CURB AND GUTTER	\$ 26.92	FOOT	348,000	\$ 9,314.32
Bid Item 147	CONCRETE CURBS, STANDARD CURB	\$ 18.73	FOOT	230,300	\$ 4,313.52
Bid Item 148	CONCRETE CURBS, THICKENED CURB AND GUTTER	\$ 30.00	FOOT	507,600	\$ 15,228.00
Bid Item 150	CONCRETE DRIVEWAYS	\$ 7.02	SQFT	2,485,000	\$ 17,514.90
Bid Item 152	CONCRETE WALKS	\$ 5.97	SQFT	10,101,400	\$ 60,305.36
Bid Item 153	MONOLITHIC CURB AND SIDEWALKS	\$ 9.66	SQFT	872,900	\$ 8,432.21
Bid Item 157	CONCRETE DRIVEWAY CONNECTIONS	\$ 7.02	SQFT	222,000	\$ 1,558.44
Bid Item 223	LAWN SEEDING	\$ 5.27	SOYD	776,667	\$ 4,093.03
Bid Item 224	TOPSOIL	\$ 32.66	CUYD	135,000	\$ 4,409.10
Bid Item 228	DECIDUOUS TREES, 3 INCH CALIPER	\$ 802.60	EACH	34,000	\$ 27,288.40
Bid Item 241	ADDITIONAL ESTABLISHMENT PERIOD	\$ 8,980.08	YEAR	1,000	\$ 8,980.08
Bid Item 251	SINGLE MAILBOX SUPPORTS	\$ 273.92	EACH	1,000	\$ 273.92
Bid Item 254	REMOVE & REINSTALL MAILBOX SUPPORTS	\$ 585.30	EACH	1,000	\$ 585.30
Bid Item 255	BENCHES, TYPE _____	\$ 2,663.12	EACH	2,000	\$ 5,326.24
Anticipated Item 2	ADJUST WATER FACILITIES - FIRE HYDRANT	\$ 2,000.00	EACH	1,000	\$ 2,000.00
Anticipated Item 7	STORMWATER PLANTINGS AND PLANT ESTABLISHMENT	\$ 12.00	SQFT	3,856,667	\$ 47,480.00
	DIRECT CITY COST TOTAL:				92.7% \$ 475,775.77

EXHIBIT B
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PROJECT Scope, Schedule and Budget

EXHIBIT B

DIRECT ODOT COSTS

NO.	ITEMS OF WORK AND MATERIALS	UNIT PRICE	UNIT	ODOT QUANTITY	ODOT AMOUNT
Bid Item 49	GENERAL EXCAVATION	\$ 24.58	CUYD	84.000	\$ 2,054.72
Bid Item 71	STORMWATER CURB EXTENSIONS	\$ 20.00	SQFT	206.333	\$ 4,126.67
Bid Item 131	AGGREGATE BASE	\$ 29.27	TON	53.333	\$ 1,561.07
Bid Item 152	CONCRETE WALKS	\$ 5.97	SQFT	4,536.000	\$ 27,079.92
Anticipated Item 7	STORMWATER PLANTINGS AND PLANT ESTABLISHMENT	\$ 12.00	SQFT	206.333	\$ 2,476.00
	DIRECT ODOT COST TOTAL:			7.3%	\$ 37,308.38

ALLOCATED CITY COSTS

NO.	ITEMS OF WORK AND MATERIALS	UNIT PRICE	UNIT	CITY QUANTITY	CITY AMOUNT
Bid Item 1	MOBILIZATION	\$ 36,890.25	LS	0.927	\$ 34,207.81
Bid Item 2	TEMPORARY PROTECTION & DIRECTION OF TRAFFIC	\$ 18,445.13	LS	0.927	\$ 17,103.91
Bid Item 22	EROSION CONTROL	\$ 6,916.92	LS	0.927	\$ 6,413.96
Bid Item 29	POLLUTION CONTROL PLAN	\$ 2,305.64	LS	0.927	\$ 2,137.99
Bid Item 42	REMOVAL OF STRUCTURES & OBSTRUCTIONS	\$ 13,833.84	LS	0.927	\$ 12,827.93
Bid Item 44	CLEARING AND GRUBBING	\$ 4,811.28	LS	0.927	\$ 4,275.96
Anticipated Item 14	BOLI FEE PAYMENT	\$ 544.13	LS	0.927	\$ 504.57
Anticipated Item 15	CONTRACT CONTINGENCY (REQUIREMENT TO ACCEPT BIDS UP TO 10% OVER ESTIMATE)	\$ 54,413.12	LS	0.927	\$ 50,456.53
Contingency	CONSTRUCTION CONTINGENCY	\$ 27,207.00	LS	0.927	\$ 25,228.67
Rounding	ROUNDING	\$ (0.01)	LS	1.000	\$ (0.01)
	SUBTOTAL #1:				\$ 153,157.34
Staff	PROJECT MANAGEMENT ENGINEERING (5% OF CONSTRUCTION):	\$ 33,912.57	LS	0.927	\$ 31,446.65
Staff	PRELIMINARY ENGINEERING (25% OF CONSTRUCTION):	\$ 168,562.87	LS	0.927	\$ 157,233.28
Staff	CONSTRUCTION ENGINEERING (15% OF CONSTRUCTION):	\$ 101,737.72	LS	0.927	\$ 94,339.97
Overhead	OVERHEAD COSTS (72% OF STAFF COSTS):	\$ 219,753.48	LS	0.927	\$ 203,774.33
	SUBTOTAL #2:				\$ 486,794.23
	ALLOCATED CITY COST TOTAL:				\$ 639,951.57

ALLOCATED ODOT COSTS

NO.	ITEMS OF WORK AND MATERIALS	UNIT PRICE	UNIT	ODOT QUANTITY	ODOT AMOUNT
Bid Item 1	MOBILIZATION	\$ 36,890.25	LS	0.073	\$ 2,682.44
Bid Item 2	TEMPORARY PROTECTION & DIRECTION OF TRAFFIC	\$ 18,445.13	LS	0.073	\$ 1,341.22
Bid Item 22	EROSION CONTROL	\$ 6,916.92	LS	0.073	\$ 502.96
Bid Item 29	POLLUTION CONTROL PLAN	\$ 2,305.64	LS	0.073	\$ 167.65
Bid Item 42	REMOVAL OF STRUCTURES & OBSTRUCTIONS	\$ 13,833.84	LS	0.073	\$ 1,005.91
Bid Item 44	CLEARING AND GRUBBING	\$ 4,811.28	LS	0.073	\$ 335.30
Anticipated Item 14	BOLI FEE PAYMENT	\$ 544.13	LS	0.073	\$ 39.57
Anticipated Item 15	CONTRACT CONTINGENCY (REQUIREMENT TO ACCEPT BIDS UP TO 10% OVER ESTIMATE)	\$ 54,413.12	LS	0.073	\$ 3,956.59
Contingency	CONSTRUCTION CONTINGENCY	\$ 27,207.00	LS	0.073	\$ 1,978.33
Rounding	ROUNDING	\$ (0.01)	LS	0.000	\$
	SUBTOTAL #1:				\$ 12,009.97

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Staff	PROJECT MANAGEMENT ENGINEERING (5% OF CONSTRUCTION):	\$ 33,912.57 LS	0.073 \$ 2,465.92
Staff	PRELIMINARY ENGINEERING (25% OF CONSTRUCTION):	\$ 169,562.87 LS	0.073 \$ 12,329.59
Staff	CONSTRUCTION ENGINEERING (15% OF CONSTRUCTION):	\$ 101,737.72 LS	0.073 \$ 7,397.75
Overhead	OVERHEAD COSTS (72% OF STAFF COSTS):	\$ 219,753.48 LS	0.073 \$ 15,979.15
	SUBTOTAL #2:		\$ 38,172.41
	ALLOCATED ODOT COST TOTAL:		\$ 50,182.38
CITY COSTS:			
	Direct		\$ 475,775.77
	Allocated:		\$ 639,951.57
	Subtotal:		\$ 1,115,727.34
	Add City Partial Subsidy of ODOT Costs		\$ 37,490.76
	Total:		\$ 1,153,218.10
ODOT COSTS:			
	Direct		\$ 37,308.38
	Allocated:		\$ 50,182.38
	Subtotal:		\$ 87,490.76
	Less City Partial Subsidy of ODOT Costs:		\$ (37,490.76)
	Total:		\$ 50,000.00
TOTAL COSTS:			
	City:		\$ 1,153,218.10
	ODOT:		\$ 50,000.00
	Grand Total		\$ 1,203,218.10

Misc. Contracts and Agreements
No. 27,211

**INTERGOVERNMENTAL AGREEMENT
I-205 Multiuse Bike/Pedestrian Path (MUP) Improvements
Near NE 97th Avenue at Glisan Street**

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 "ODOT"; and the CITY OF PORTLAND, acting by and through its elected officials, hereinafter referred to as "CITY," both herein referred to individually or collectively as "Party" or "Parties".

RECITALS

1. East Portland Freeway (I-205) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). NE 97th Avenue is a part of the city street system under the jurisdiction and control of CITY.
2. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
3. ODOT constructed a multi-use path, hereinafter referred to as "I-205 MUP", for bike/pedestrian transportation use contiguous to I-205. CITY is constructing street and stormwater improvements along NE 97th Avenue, which includes curbs, sidewalks and landscaping in the vicinity of the I-205 MUP. CITY has proposed to perform the work for the improvements to the I-205 MUP as they are already constructing in the area. ODOT is contributing funds for the I-205 MUP improvements.

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

TERMS OF AGREEMENT

1. Under such authority, ODOT wishes to retain the services of CITY to design and construct improvements to a portion of the I-205 MUP. The design and improvements shall include bike path surface improvements and new stormwater management facilities consisting of stormwater curb extensions to resolve problems with surface water on the path, hereinafter referred to as "Project". The location for the Project is as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project will be financed at an estimated cost, not to exceed, \$50,000 in funds available to ODOT. ODOT shall provide said payment in one lump sum payment. CITY shall be responsible for any Project costs beyond the estimate and for all CITY

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activities on their adjacent project on CITY right of way. Eligible costs include construction, project management, engineering, and financing. Construction costs will be based on the quantities as shown in Exhibit B. Costs other than construction will be allocated on the ratio of direct ODOT construction costs to direct CITY construction costs based on unit prices in the 60% estimate and the proportion will not be rebalanced based on the actual bid. Quantities including the ratio of CITY to ODOT will be based on as-builts. ODOT shall pay for one-third of the cost of two stormwater curb extensions controlling water run-off for the I-205 MUP, the first one being at the southwest corner of NE 97th Avenue & Glisan Street within the CITY right-of-way and the second one being the next stormwater curb extension to the south, on the west side of NE 97th Avenue, also within the CITY right-of-way .

3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within five (5) calendar years following the date of final execution of this Agreement by both Parties.

CITY OBLIGATIONS

1. CITY shall perform the work described in Exhibit B.
2. CITY shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned ODOT District 2B Project Manager prior to construction, as well as engineering design review approval from ODOT. CITY agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
3. CITY shall, prior to its advertisement for construction bid proposals, provide the Project preliminary and final plans and specifications to ODOT's District 2B Project Manager and Region 1 Bike/Pedestrian Coordinator for review and written concurrence. ODOT District 2B Manager shall coordinate all such review.
4. CITY shall keep accurate cost accounting records. CITY shall prepare and submit an itemized invoice after substantial completion of construction directly to ODOT's Project Manager for review and approval. The invoice shall be for the lump sum amount for CITY's services, described herein, and shall be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall ODOT's obligations exceed \$50,000 for the Project.

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5. CITY shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from ODOT
6. 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. CITY shall ensure that each of its subcontractors complies with these requirements.
7. CITY shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
8. CITY acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, and their duly authorized representatives shall have access to the books, documents, papers, and records of CITY which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
9. CITY shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholding.
10. CITY shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of CITY's contractor or any of the officers, agents, employees or subcontractors of the contractor("Claims"). It is the specific intention of the Parties that the ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the ODOT, be indemnified by the contractor and subcontractor from and against any and all Claims.
11. Any such indemnification shall also provide that neither the CITY's contractor and subcontractor nor any attorney engaged by CITY's contractor and subcontractor

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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 CITY's contractor is prohibited from defending the State of Oregon, or that CITY's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against CITY's contractor if the State of Oregon elects to assume its own defense.

12. 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, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, CITY expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
13. If CITY chooses to assign its contracting responsibilities to a consultant or contractor, CITY shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.
14. If CITY enters into a construction contract for performance of work on the Project, then CITY will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless ODOT from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
 - b. Contractor and CITY shall name ODOT as a third party beneficiary of the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to ODOT. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may

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- be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 2,000,000.
- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
- e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include ODOT and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to ODOT. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
16. CITY is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at CITY's own expense.
17. CITY is also responsible, at its own expense, for replacement of any additional ODOT survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, CITY shall contact ODOT's Geometrics Unit for replacement procedures.
18. CITY shall, upon successful completion and acceptance of each portion of the Project by ODOT, relinquish all physical improvements made as part of Project's I-205 MUP improvements to ODOT as may be determined by the Parties respective areas of jurisdiction. Any and all design drawings, manufacturer or contractor's warranties, guarantees, operation manuals or similar items necessary to operate or

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maintain the physical improvements will be provided to ODOT at the time of relinquishment.

19. CITY shall retain ownership and maintain the stormwater management facilities constructed as part of the Project. All ownership and maintenance responsibilities of the other Project portions and facilities of the I-205 MUP shall remain an ODOT expense.
20. CITY shall provide to ODOT permanent mylar "as constructed" plans for work on state highways. If CITY redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the "Contract Plans Development Guide, Volume 1 Chapter 16" http://www.oregon.gov/State/HWY/ENGSERVICES/docs/dev_guide/vol_1/V1-16.pdf, CITY shall provide to ODOT a Portable Document Format (PDF) file and a paper copy of the plan set.
21. CITY certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of CITY, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind CITY.
22. CITY's Project Manager for this Project is Andrew Aebi (1120 SW 5th Avenue, Suite #800, Portland, OR 97204; Phone: 503-823-5648 Email: andrew.aebi@portlandoregon.gov, or assigned designee upon individual's absence. CITY shall notify the other Party in writing of any contact information changes during the term of this Agreement.

ODOT OBLIGATIONS

1. As described in CITY Obligations, Paragraph 4, ODOT shall reimburse CITY for agreed upon Project activity expenses upon receipt of the single itemized, invoice by ODOT's Project Manager for review and approval. Payment shall be made upon final inspection and approval by ODOT District 2B and the Region 1 Bike/Pedestrian Coordinator. Under no conditions shall ODOT's obligations exceed \$50,000, including all expenses. ODOT shall reimburse CITY within thirty (30) days of the invoice date as long as the Project is ready for final inspection within this timeframe.
2. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of the current biennial budget.
3. ODOT grants authority to CITY to enter upon ODOT right of way for the construction of this Project as provided for in "Occupy or Perform Operations upon a State Highway" permit to be issued by ODOT District 2B Office.

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4. ODOT shall continue to perform and the pay all costs for maintenance to the I-205 MUP except for the Project stormwater curb extensions, which shall be maintained by the CITY. ODOT shall not pay landscape maintenance except to the extent necessary to mitigate impacts to grade changes, cuts and fills, or other vertical impacts necessary to rebuild the I-205 MUP, as well as lawn seeding or other planting necessary for erosion control. The stormwater curb extensions, including vegetation planting necessary to drain the street and I-205 MUP are not considered a landscape expense and are maintained by CITY.
5. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of the current biennial budget.
6. ODOT must identify any survey marks or other monumentation on the I-205 MUP or ODOT right of way and not recorded with a county to CITY prior to the start of construction per CITY Obligation No. 16.
7. ODOT's Project Manager for this Project is Mike Strauch, District 2B Manager, 9200 SE Lawnfield Road, Clackamas, OR 97015, Phone: 971-673-6200, Email: Michael.L.Strauch@odot.state.or.us, , or assigned designee upon individual's absence.
8. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. ODOT may terminate this Agreement effective upon delivery of written notice to CITY, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If CITY fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If CITY 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 ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.
 - c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its

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reasonable administrative discretion, to continue to make payments for performance of this Agreement, provided that the rescission of funding is made in writing and is received by the CITY project manager before it has advertised for bids for construction of the project.

- d. 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.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. 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 CITY with respect to which the 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 a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which the ODOT is jointly liable with the CITY (or would be if joined in the Third Party Claim), the 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 CITY in such proportion as is appropriate to reflect the relative fault of the ODOT on the one hand and of the CITY 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 ODOT on the one hand and of the CITY 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 the Oregon Tort Claims Act, ORS 30.260 to 30.300, if the ODOT had sole liability in the proceeding.
7. With respect to a Third Party Claim for which the CITY is jointly liable with the ODOT (or would be if joined in the Third Party Claim), the CITY shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid

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in settlement actually and reasonably incurred and paid or payable by the ODOT in such proportion as is appropriate to reflect the relative fault of the CITY on the one hand and of the 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 CITY on the one hand and of the 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 CITY's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

8. The Parties shall attempt in good faith to resolve any dispute arising out of this 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.
9. 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.
10. 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 shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

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

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 2, in which day-to-day authority is

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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 2, in which day-to-day authority is delegated to the Region Managers for their respective Regions, which includes the authority to approve and sign agreements up to \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program, other system plans approved by the Oregon Transportation Commission, or in a line item in the biennial budget approved by the Director.

CITY OF PORTLAND, by and through its elected officials

By _____
Mayor

Date _____

By _____
Auditor

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
APPROVED AS TO FORM

By _____
Counsel *Julia Nguyen*
CITY ATTORNEY

Date _____ *2/8/11*

CITY Contact:

Andrew Aebi
1120 SW 5th Avenue, Suite #800
Portland, OR 97204
Phone: 503-823-5648
Email: andrew.aebi@portlandoregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
Region1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
State Traffic Engineer

Date _____

By _____
District 2B Manager

Date _____

ODOT Contact:

Bobby Walker, District 2B Interim Mngr.,
9200 SE Lawnfield Road
Clackamas, OR 97015
Phone: 971-673-6200
Email: bobby.d.walker@odot.state.or.us