

Misc. Contracts and Agreements No. 28038  
Cross Ref. Master Certification Agreement 21492

Oregon Department of Transportation  
LOCAL AGENCY CERTIFICATION PROGRAM  
Supplemental Project Agreement No. 28038  
***Red Electric Trail: SW 30<sup>th</sup> Avenue to SW Vermont 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 "State;" 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. By the authority granted in Local Agency Certification Program Agreement No. 21492 incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with City for the performance of work on this improvement Project. The Certification Program allows State to certify a Local Agency's procedures and delegates authority to the certified Local Agency to administer federal-aid projects that are not on the National Highway System.
2. Red Electric Trail, SW 30<sup>th</sup> and SW Vermont are a part of the City's street system under the jurisdiction and control of City.

**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, City agrees to provide pedestrian and cyclist on-street and off-street trail connection on the segment of the Red Electric Trail from SW 30<sup>th</sup> Avenue to SW Vermont Street, hereinafter referred to as "Project". The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A" and by this reference made a part hereof.
2. The total estimated cost of the Project is \$2,200,000, which is subject to change.
3. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. STP Metro funds for this Project shall be estimated at \$180,357. The Project will be financed with STP Metro funds at the maximum allowable federal participating amount, with City providing the match and any non-participating costs, including all costs in excess of the available federal funds.

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4. The Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The CMAQ funds are limited to \$1,359,410. Eligible costs for the Project will be reimbursed at the full federal share or until the \$1,359,410 limit is reached. Agency shall be responsible for determining the amount of federal funds to be applied to each phase of the Project. Agency is not guaranteed the use of unspent funds for a particular phase of work. It is Agency's responsibility to notify State in advance of State obligating the funds for a subsequent phase if Agency wants to release funds on the current authorized phase(s) of work.
- 4a. City shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$44,570.06 for the Project, said amount being equal to the estimated total cost for the work performed by State at City's request. City agrees to make additional deposits as needed upon request from State. Depending upon the timing of portions of the Project to which the advance deposit contributes, it may be requested by State prior to preliminary engineering, purchase of right of way, or approximately four (4) to six (6) weeks prior to Project bid opening. The work being performed by State on behalf of City includes right of way certification and environmental clearance. State will make all payments for said services. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the Project, City shall pay any amount which, when added to City's advance deposit, will equal one-hundred (100) percent of actual total State costs for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to City.
- b. City shall make all payments for construction at one-hundred (100) percent. State shall reimburse City invoices at the pro-rated federal share. All costs beyond the federal reimbursement and any non-participating costs will be the responsibility of the City. State shall perform work in the estimated amount of \$2,200,000. State shall simultaneously invoice FHWA and City for State's Project costs, and City agrees to reimburse State for the federal-aid matching state share and any non-participating costs as determined in accordance with paragraph number 3, above upon receipt of invoice. Failure of City to make such payments to State may result in withholding of City's proportional allocation of State Highway Trust Funds until such costs are paid. Agency understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.
5. City shall select consultants, design, advertise, bid, award the construction contract, and construction administration. City understands that this Project is a test project and agrees to comply with all of the terms and conditions found in Certification Program Agreement No. 21492.

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6. The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at City expense. State's Regional Local Agency Liaison or designee will provide City with a written notice to proceed when FHWA approval has been secured and funds are available for expenditure on this Project.
7. State considers City a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
8. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or 10 calendar years following the date all required signatures are obtained, whichever is sooner.
9. Local Agency Certification Program Agreement No. 21492 was fully executed on November 1, 2005 and amended on September 25, 2007. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
10. City shall, upon completion of Project and as a condition to this Agreement, complete and file with the appropriate County Clerk, an Acknowledgment of Federal Assistance, which is attached hereto as Exhibit B, and by this reference is made a part hereof. City shall provide confirmation of this filing by forwarding to the State's Regional Local Agency Liaison a conformed copy of the recorded Acknowledgment of Federal Assistance Form. By means of said acknowledgment, a lien shall be established against said property and assets subject to the satisfaction of City's financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation and/or demand. State's interest in said property is proportional to the federal and state participation in Project.
11. City shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and/or service demand. State and City Agree that the useful life of this Project is defined as twenty (20) years.
12. State may conduct periodic inspections during the life of City Certification Projects to verify that Projects are being properly maintained and continue to serve the purpose for which federal funds were provided.
13. This Agreement may be terminated by mutual written consent of both Parties.

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14. State may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by State, 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 State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If City fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
15. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
16. City, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for City's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon City's breach of any such conditions that requires State to return funds to the FHWA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of City, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
17. 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.
18. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 21492, and all and the attached exhibits constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein

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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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

19. State's Project Liaison for the Agreement is Bret Richards, 123 NW Flanders Street, Portland, OR 97209, 503-731-8288, [bret.n.richards@odot.state.or.us](mailto:bret.n.richards@odot.state.or.us), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

20. City's Project Liaison for this Agreement is Kyle Chisek, 1120 SW 5<sup>th</sup> Avenue, Room 800, Portland, OR 97204, 503-823-7041, [kyle.chisek@portlandoregon.gov](mailto:kyle.chisek@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.

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

This Project is in the 2010-2013 Statewide Transportation Improvement Program, (Key #17268) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

**SIGNATURE PAGE TO FOLLOW**

184888

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**CITY OF PORTLAND**, acting by and  
through its elected officials

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

By \_\_\_\_\_  
Auditor

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

**APPROVED AS TO FORM**

By \_\_\_\_\_  
City Legal Counsel

Date \_\_\_\_\_  
CITY ATTORNEY *9/14/11*

**City Contact:**

Kyle Chisek - PDOT  
1120 SW 5<sup>th</sup> Avenue, Room 800  
Portland, OR 97204  
503-823-5595  
kyle.chisek@portlandoregon.gov

**State Contact:**

Bret Richards - ODOT  
123 NW Flanders Street  
Portland, OR 97209  
503-731-8288  
bret.n.richards@odot.state.or.us

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

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief  
Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Local Government Section Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Manager

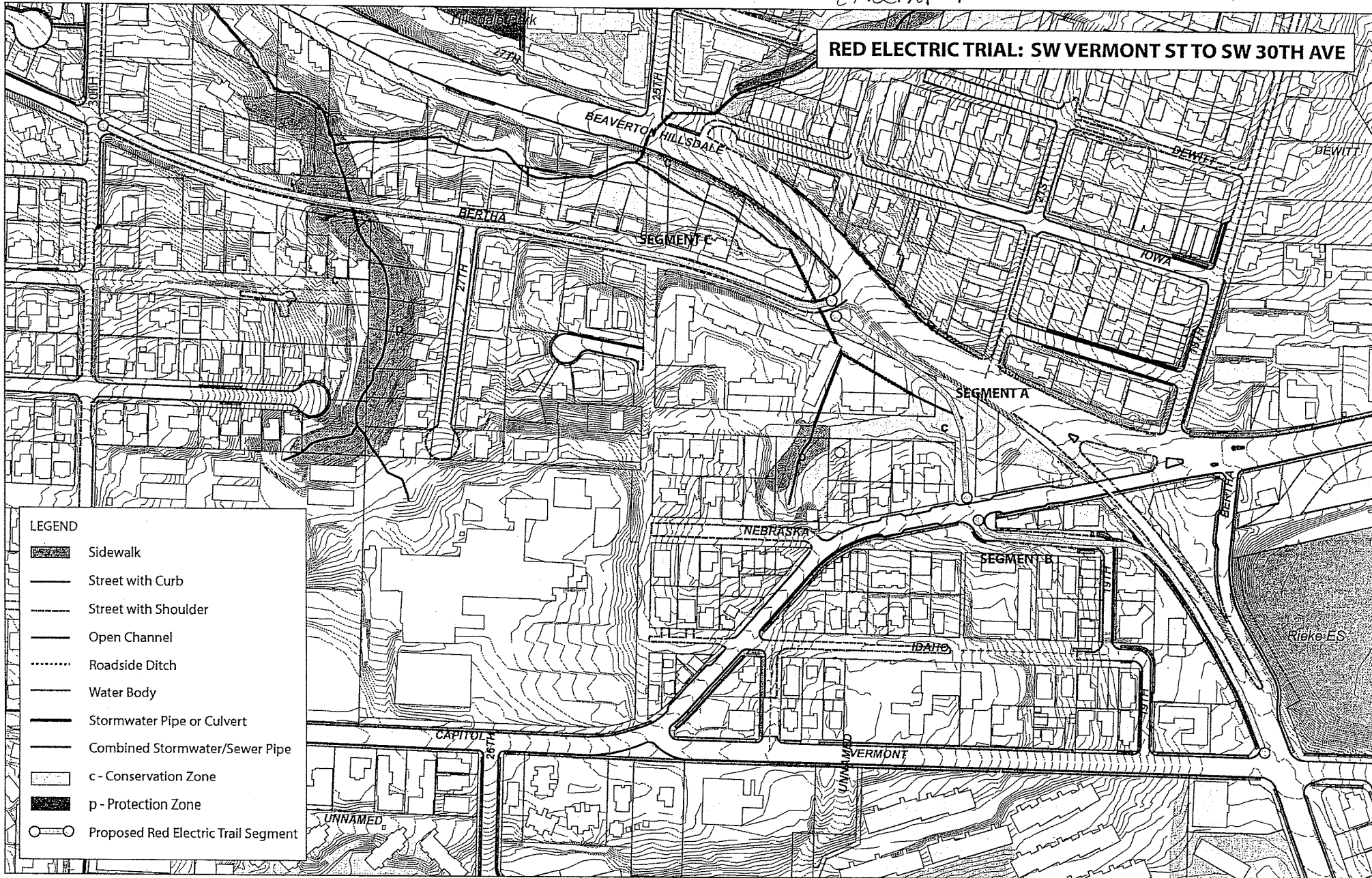
Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

Exhibit A



184888

After recording, return to:

Bret Richards - ODOT  
123 NW Flanders Street  
Portland, OR 97209  
503-731-8288

[bret.n.richards@odot.state.or.us](mailto:bret.n.richards@odot.state.or.us)

**EXHIBIT B**

**MEMORANDUM OF AGREEMENT AND ACKNOWLEDGEMENT OF FEDERAL ASSISTANCE**

**[State Recording Authority: ORS 93.710 and ORS 205.130(2)]**

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Project Name: Red Electric Trail: SW 30<sup>th</sup> Avenue to SW Vermont Street

Key Number: 17268

Supplemental Project Agreement No. 28038 between the City of Portland and the State of Oregon, Department of Transportation was executed on \_\_\_\_\_. Pursuant to paragraph 10, City Obligations, page 3 of the Supplemental Project Agreement, upon the recording of this document, the City of Portland received federal funds for the Project described in the Supplemental Project Agreement. The property and assets under the jurisdiction of the City of Portland were improved with the assistance from the United States Government. Such assistance was provided to the City of Portland, in reimbursement of costs associated with the City of Portland. The use and disposition of said property is subject to the terms of the above noted Supplemental Project Agreement, copies of which may be obtained from the Director of ODOT and is also subject to 49 CFR Part 18. A description of the improved property is attached.

**CITY OF PORTLAND**

By: \_\_\_\_\_

(Notary Stamp)

(Name of person)

Title: \_\_\_\_\_

State of Oregon: County of \_\_\_\_\_

Signed or attested before me on \_\_\_\_\_ by \_\_\_\_\_

(Date)

(name(s) of person(s))

\_\_\_\_\_ My commission expires on \_\_\_\_\_.

**STATE OF OREGON, DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

(Notary Stamp)

Darel Capps

Title: Transportation Finance Manager

Signed or attested before me on \_\_\_\_\_ by \_\_\_\_\_

(Date)

(name(s) of person(s))

\_\_\_\_\_ My commission expires on \_\_\_\_\_.

Oregon Department of Transportation; 3930 Fairview Industrial Drive, SE; Salem, OR 97302.



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**Exhibit A – Project Location Map**