

Misc. Contracts and Agreements No. 28043
Cross Ref. Master Certification Agreement 21492

Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 28043
NE/SE 50's Bikeway: NE Thompson to SE Woodstock

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. SE 52nd Avenue and NE 53rd Avenue are a part of the City's street system under the jurisdiction and control of City.
3. This Supplemental Project Agreement will be considered a required test project that constitutes conditional certification for consultant selection, should consultant selection be performed by City, as described in Local Agency Certification Program (Certification Program) Agreement No. 21492.

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 Bike and Pedestrian improvements along SE 52nd Avenue and NE 53rd Avenue from SE Woodstock Boulevard to NE Thompson Street, hereinafter referred to as "Project". In the northern segment, traffic calming improvements such as curb extensions and High-Intensity Activated crossWalk (HAWK) pedestrian signals located at arterial intersections will be added to improve safety. 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 \$1,520,853, which is subject to change.

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3. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. STP urban funds for this Project shall be limited to \$1,366,000. The Project will be financed with STP urban 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.
4. 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 \$39,000. The work being performed by State includes federal oversight, compliance review, project development and construction monitoring, Region Assurance Specialist services, and Project documentation and accounting closeout. State shall also perform at City request right of way certification and environmental clearance. If State costs are to exceed \$39,000, State shall notify City in writing. 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. City 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 perform construction administration. City understands that if consultant selection is performed on this Project, that portion of the Project shall be considered a test project and agrees to comply with all of the terms and conditions found in Certification Program Agreement No. 21492. City agrees that consultant selection, design, advertising, bid, award the construction contract, and construction administration for City's federal-aid non-NHS projects shall be performed only by City's Bureau of Transportation, Development and Capital Group
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.

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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 ten (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. This Agreement shall supersede and replace Agreement No. 26187 and its supplements in its entirety. Agreement No. 26187 is terminated upon execution of this Agreement. Bills for preliminary engineering work incurred prior to the replacement of Agreement No. 26187 shall be invoiced by City and paid for by State under this Agreement.
11. If City fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the City's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such City breach.
12. 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.
13. 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.
14. This Agreement may be terminated by mutual written consent of both Parties.
15. 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.

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- 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.
16. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
17. 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.
18. 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.
19. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 21492, as amended and all attached exhibits constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement 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.
20. 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 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.
21. City's Project Liaison for this Agreement is Rich Newlands, 1120 SW 5th Avenue, Suite 800, Portland, OR 97204, 503-823-7780, rich.newlands@portlandoregon.gov,

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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 #15589) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

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CITY OF PORTLAND, acting by and
through its elected officials

By _____
Mayor

Date _____

By _____
City Auditor

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By *Linda Newland*
City Legal Counsel **CITY ATTORNEY**

Date 1/9/2012

City Contact:

Rich Newlands
1120 SW 5th Avenue, Suite 800
Portland, OR 97204
503-823-7780
rich.newlands@portlandoregon.gov

State Contact:

Bret Richards
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 _____

[illegible]