

Misc. Contracts and Agreements No. 28046  
Cross Ref. Master Certification Agreement 21492

Oregon Department of Transportation  
LOCAL AGENCY CERTIFICATION PROGRAM  
Supplemental Project Agreement No. 28046  
Foster – Woodstock: SE 87<sup>th</sup> Avenue to SE 101<sup>st</sup> Avenue

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 Foster Road and SE Woodstock Boulevard are a part of the City's street system under the jurisdiction and control of City.
3. The Supplemental Project Agreement will be considered a test project that constitutes conditional certification for consultant selections, should consultant selection be performed by Agency, as described in Local Agency 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 implement portions of the Lents Business District Transportation Plan through sidewalk widening, improved pedestrian crossings, intersection realignment, street trees, pedestrian street lighting, and realignment of north leg of intersection of SE Foster Road at SE 91<sup>st</sup> Avenue to improve vehicular circulation and pedestrian crossing safety, 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 \$4,696,000, which is subject to change.
3. The Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) under Title 23, United States Code. CMAQ funds for this Project shall be limited to \$1,960,802. The Project will be financed with CMAQ funds at the

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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 work performed on the Project, including all construction costs, and invoice State for one-hundred (100) percent of its costs. State shall reimburse City invoices at the pro-rated federal share. All costs beyond the federal and/or state reimbursement, and any non-participating costs will be the responsibility of the City. State shall perform work in the estimated amount of \$8,000. 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. 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, and award the construction contract, and perform construction contract 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, designing, advertising, bidding, and awarding 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. City shall advertise, bid and award the construction contract, and perform construction contract administration.
7. 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.
8. 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.
9. 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.

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10. 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.
11. This Agreement shall supersede and replace Agreement No. 26285 and its supplements in its entirety. Agreement No. 26285 is terminated upon execution of this Agreement. Bills for preliminary engineering work incurred prior to the replacement of Agreement No. 26285 shall be invoiced by City and paid for by State under this Agreement.
12. 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.
13. 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.
14. 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.
15. This Agreement may be terminated by mutual written consent of both Parties.
16. 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.

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17. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
18. 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.
19. 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.
20. 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.
21. 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.
22. City's Project Liaison for this Agreement is Rich Newlands, 1120 SW 5<sup>th</sup> Ave., Room 800, Portland, OR 97204, (503) 823-7780, [rich.newlands@portlandoregon.gov](mailto:rich.newlands@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 #15591) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

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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**

By James H. Van Dyke  
City Legal Counsel  
CITY ATTORNEY

Date 2/8/2012

**City Contact:**

Rich Newlands  
1120 SW 5<sup>th</sup> Ave., Room 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 \_\_\_\_\_  
Active Transportation Section Manager

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

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

Date \_\_\_\_\_

The map displays a grid of streets in Lents, Oregon. A large area is outlined in black, indicating the 'PROJECT LOCATION'. This area is bounded roughly by No. 68 to the west, North to the east, and between 90th and 100th St. to the north and south. Major thoroughfares shown include No. 68 running vertically on the left, North running horizontally across the middle, and Watson running vertically on the right. Other streets include Schiller, Liebe, Raymond, Mitchell, Steele, Harold, Ellis, Reedway, Ramona, Knight, Yukon, Martins, Henry, Woodstock, Duke, Glenwood, Cooper, Rural, Knapp, Flavel, Henderson, Bybee, and Knapp. Landmarks such as Lents Elementary School, Lents Education Center, and a water tank are also marked. The map shows the proximity of the project to the Lents Junction and the Watson area.