

Misc. Contracts and Agreements No. 28129
Cross Ref. Master Certification Agreement 21492

Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 28129
SE Holgate & SE Ramona: 122nd to 136th Avenue Sidewalks

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 Holgate and Ramona are a part of the City's street system under the jurisdiction and control of City.
3. City's work performed under the terms of 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 construct a six (6) foot wide sidewalk with curb ramps, curb extensions, and four (4) foot wide planting strips on the north side of Holgate Boulevard and the south side of Ramona Street, hereinafter referred to as "Project". The Project will include pedestrian refuge islands, mid-block curb extensions for stormwater management, and a ten (10) foot width of roadway reconstruction to allow for the curb extensions and marked bike lanes. The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A" and by this reference made a part hereof. The Project scope and schedule, progress report requirements, and Project Change Request process are described in Exhibit

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B, attached hereto and by this reference made a part hereof. Agency agrees to the conditions set forth in Exhibit B.

2. The total estimated cost of the Project is \$1,593,000, which is subject to change.
3. The Project shall be conducted as a part of the Transportation Enhancement Program under Title 23, United States Code. Transportation Enhancement funds for this Project shall be estimated at \$1,351,800 for Preliminary Engineering and Construction of the Project. Transportation Enhancement funds for the Preliminary Engineering phase are limited to \$341,000. The Project will be financed with Transportation Enhancement 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.
 - a. City must obtain approval from State's Transportation Enhancement Program Manager for any additional funds beyond the amount in Paragraph No. 2 above. For additional Enhancement Funds up to a total of \$1,487,000 City's matching share will be 10.27 percent of Enhancement eligible costs. State's Transportation Enhancement Program Manager must consult with the Transportation Enhancement Advisory Committee before approving any additional funds exceeding \$1,487,000.
 - b. City is not guaranteed the use of unspent funds for a particular phase of work. State will not release funds from any authorized phase of work for use on a subsequent phase unless specifically requested by City before obligating funds on the subsequent phase.
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 state reimbursement, any deposited local funds, and any non-participating costs will be the responsibility of the City. State shall perform work in the estimated amount of \$7,000. The work being performed by State includes federal oversight, compliance review, project development and construction monitoring, and Project documentation and accounting closeout. 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.

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5. City shall select consultants, design, advertise, bid, 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, 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 and Engineering Services.
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 ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. The Parties agree that the target delivery date for the Project's "Plans, Specifications, and Estimates" (PS&E) package is May 15, 2013. State may withdraw all Transportation Enhancement Funds that are not obligated on or before May 15, 2014, which is twelve (12) months after the obligation date assigned by State. In that event, State may reassign any Transportation Enhance funds not yet obligated for the Project and shall have no obligation to fund any remaining phases of work through the Transportation Enhancement program.
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. 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. City will be ineligible to receive or apply for any Enhancement Funds until State receives full reimbursement of the costs incurred.
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

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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.
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.

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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, 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.
19. State's Project Liaison for the Agreement is Bret Richards, Local Agency Liaison, 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.
20. City's Project Liaison for this Agreement is Winston Sandino, Project Manager, 1120 SW 5th Avenue, Room 800, Portland, OR 97204, (503) 823-5767, winston.sandino@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 #17888) 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 Recorder

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By James H. Van Dyke
City Legal Counsel
CITY ATTORNEY

Date 5/1/12

City Contact:

Winston Sandino, Project Manager
1120 SW 5th Avenue, Room 800
Portland, OR 97204
(503) 823-5767
winston.sandino@portlandoregon.gov

State Contact:

Bret Richards, Local Agency Liaison
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 _____
Active Transportation Section Manager

Date _____

By _____
Region 1 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

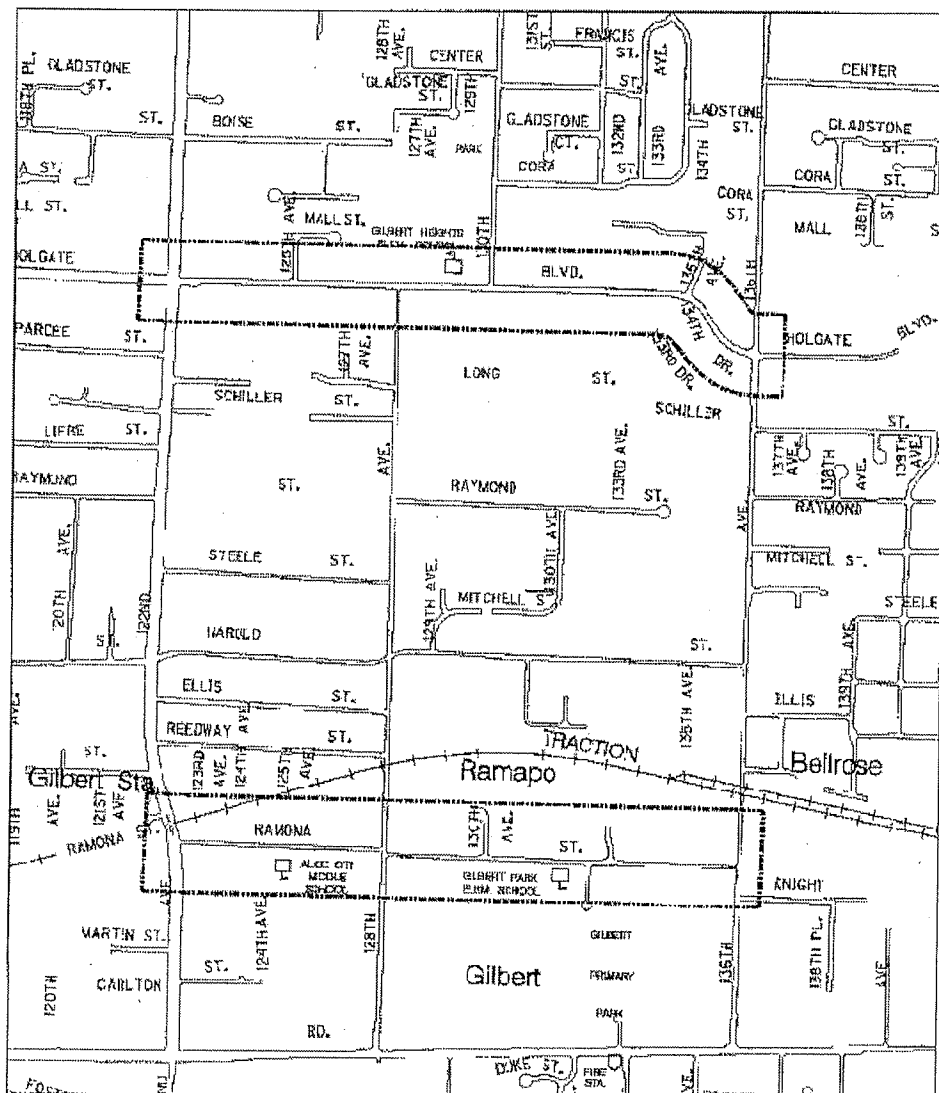
By _____
Assistant Attorney General

Date _____

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Exhibit A – Project Location Map

S.E. Ramona St. & S.E. Holgate St.



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EXHIBIT B
Progress Reports and Project Change Request Process

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Key Number: 17888

Project Name: SE Holgate & SE Ramona: 122nd to 136th Avenue Sidewalks

1. Project Description

Construction of a six (6) foot wide sidewalk with curb ramps, curb extensions, and four (4) foot wide planting strips on the north side of Holgate Boulevard and the south side of Ramona Street. The Project will include pedestrian refuge islands, mid-block curb extensions for stormwater management, and a ten (10) foot width of roadway reconstruction to allow for the curb extensions and marked bike lanes.

2. This Project is subject to progress reporting and project change process as stated in paragraphs No. 3 through No. 5 below.

3. **Monthly Progress Reports (MPR)** - City shall submit monthly progress reports using MPR Form 734-2862, attached by reference and made a part of this Agreement. The Monthly Progress Report is due by the 5th day of each month, starting the first month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project's construction contract.

The fillable MPR form and instructions are available at the following address:
<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>

4. **Project Milestones** - The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

Table 1: Project Milestones

	Milestone Description	Schedule Date
1	Obligation (Federal Authorization) of Enhancement Funds for the Preliminary Engineering phase of Project	October 15, 2011
2	Obligation (Federal Authorization) of Enhancement Funds for the Construction phase of Project	May 15, 2013
3	Project Completion based on State issuing Project Acceptance or "Second Note"	December 31, 2013

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5. **Project Change Request (PCR) Process** - City must obtain approval from State's Contact and State's Transportation Enhancement Program Manager for changes to the Project's scope, schedule, or budget as specified in paragraphs 5a, 5b and 5c, below. City shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR.
- a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).
 - b. **Schedule** - A PCR is required if City or State's Contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
 - c. **Budget** - Total Project Cost and approved Enhancement funds for the Project are controlled by Terms of Agreement paragraphs 2 and 2a, on pages 1 and 2 of this Agreement. A PCR is required to obtain State's approval for increased Enhancement funds for any phase of the Project.

City must submit all change requests using PCR Form 734-2863, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to City. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion of State's Transportation Enhancement Program Manager.

The fillable PCR form and its instructions are available at the following web site:
<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>

6. **Consequence for Non-Performance** - If City fails to fulfill its obligations in paragraphs No. 3 through No. 5 above, or does not advance the Project according to the Project Milestones, State's course of action through the duration of City's default may be (1) restricting Agency consideration for future funds awarded through State's Active Transportation Section, then (2) withdrawing unused Project funds as specified in Special Provision #1 of this Agreement, and then (3) terminating this Agreement as stated in paragraphs #14a and 14b of this Agreement.