

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 28473
FLEXIBLE FUNDS PROGRAM 2011
SURFACE TRANSPORTATION PROGRAM –URBAN
East Portland Access to Transit
City of Portland**

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 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. 26586 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 the 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. The East Portland Access to Transit Area is part of the City's street system under the jurisdiction and control of City.
3. The 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. 26586.
4. In February 2010, the Oregon Transportation Commission (OTC) established the Flexible Funds Program to more strategically focus investment in non-highway transportation projects, programs and services. The Flexible Funds Program was put in place to support sustainable non-highway transportation projects, programs and services that positively impact modal connectivity, the environment, mobility and access, livability, energy use and the overall operation of the transportation system. In July 2011, the OTC approved updated flexible funds program criteria.
5. On March 21, 2012 the Oregon Transportation Commission (OTC) approved the allocation of \$23,600,000 in Surface Transportation Program (STP) Flexible funds for use on non-highway Transit, Bicycle and Pedestrian and Transportation Demand Management (TDM) projects.

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 complete final design and construction of an approximately 825 square foot Bike and Ride facility, and upgrade up to eight bus stops on SE Division and SE

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122nd Avenue in Portland hereinafter referred to as "Project." The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof. The Project description, tasks and deliverables, schedule and budget are further described in Exhibit B, attached hereto and by this reference made a part hereof.

2. The total Project cost is estimated at \$4,472,310, which is subject to change.
3. A portion of the Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. STP Flexible Funds for this Project will be limited to \$640,000. The Project will be financed with STP Flexible 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. The STP Flexible Funds are available for all phases of the Project.
4. A portion of the Project will 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 will be limited to \$3,373,000. The Project will be financed with STP Urban Funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.
5. City agrees that no portion of the match requirement will be in-kind contributions.
6. City shall make all payments for work performed on the Project, including all construction costs, and invoice State for 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 \$7,500. 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 numbers 3 and 4, above upon receipt of invoice. City understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.
7. 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.
8. All STP Flexible Funds must adhere to the specific obligation and completion requirements. Non-construction projects must be ready for obligation no later than September 30, 2012 and completed or implemented by December 31, 2014. Construction projects must obligate the Preliminary Engineering phase by September 30, 2012, Right-of-Away and Construction phases must be obligated by September 30, 2013. Construction projects must be completed by December 31, 2014. After September 30, 2012 for non-construction Projects and September 30, 2013 for construction projects the State may withdraw and reassign any STP Flexible Funds not yet

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- obligated for the Project and shall have no obligation to fund any remaining phases of work through the Flexible Funds Program. The withdrawal of funds will not affect funding and payments for Preliminary Engineering or other phases of work that were obligated prior to the above stated dates.
9. If City cannot meet obligation of STP Flexible funds as intended by the program as stated in Paragraph 6, above, then City shall adhere to the Project Change Request process as stated in Exhibit B.
 10. City shall submit Monthly Progress Reports to State's Contact and State's Flexible Funds Program Manager and Project Change Requests to State's Contact, following the process as listed in Exhibit B.
 11. 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. 26586. 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.
 12. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (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.
 13. 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.
 14. 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.
 15. Local Agency Certification Program Agreement No. 26586 was fully executed on September 6, 2012. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
 16. 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.

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17. State may conduct periodic inspections during the life of City's Certification Projects to verify that Projects are being properly maintained and continue to serve the purpose for which federal funds were provided.
18. The Parties agree that this Agreement may be terminated if the funds for this Project are not obligated as stated in Terms of Agreement, Paragraphs 3 and 4. Upon termination of this Agreement, State may reassign any STP Flexible funds not yet obligated for the Project and will have no obligation to fund any remaining phases of work through the Flexible Funds Program.
19. This Agreement may be terminated by mutual written consent of both Parties.
20. 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.
21. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
22. State's Flexible Funds Program Manager and State Contact must approve bus improvement design when the plans are sixty (60) percent complete.
23. 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 condition 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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24. State's Flexible Funds Program Manager is Carol Olsen, Active Transportation Section, 555 13th Street NE, Suite 2, Salem, Oregon 97301-4178, Salem, OR 97302, 503-986-3327, carol.a.olsen@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.
25. State's Contact and Local Agency Liaison is Bret Richards, 123 NW Flanders Street, Portland, OR 97209, (503) 731-8276, 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.
26. City's Project Manager for this Project is Kyle Chisek, Project Manager, 1120 SW 5th Avenue, Room 800, Portland, OR 97204, 503-823-7041, 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.
27. 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.
28. This Agreement and the Certification Program Agreement No. 26586, 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.

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 # 18021) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

The Oregon Transportation Commission at its March 21, 2012 meeting approved the Flexible Funds Program project application list and delegated authority to the Director of the Oregon Department of Transportation to enter into project agreements.

Signature page to follow

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CITY OF PORTLAND acting by and
through its elected officials

By _____
Mayor

Date _____

By _____
Recorder

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
City Legal Counsel
CITY ATTORNEY

Date _____ 12/11/12

City Contact:

Kyle Chisek, Project Manager
Portland Bureau of Transportation
1120 SW 5th Avenue, Room 800
Portland, OR 97204
503-823-7041
kyle.chisek@portlandoregon.gov

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

By _____
Director

Date _____

APPROVAL RECOMMENDED

By _____
Planning Section Manager

Date _____

By _____
Active Transportation Section Manager

Date _____

By _____
Region 1 Manager

Date _____ 11/26/12

**APPROVED AS TO LEGAL
SUFFICIENCY**

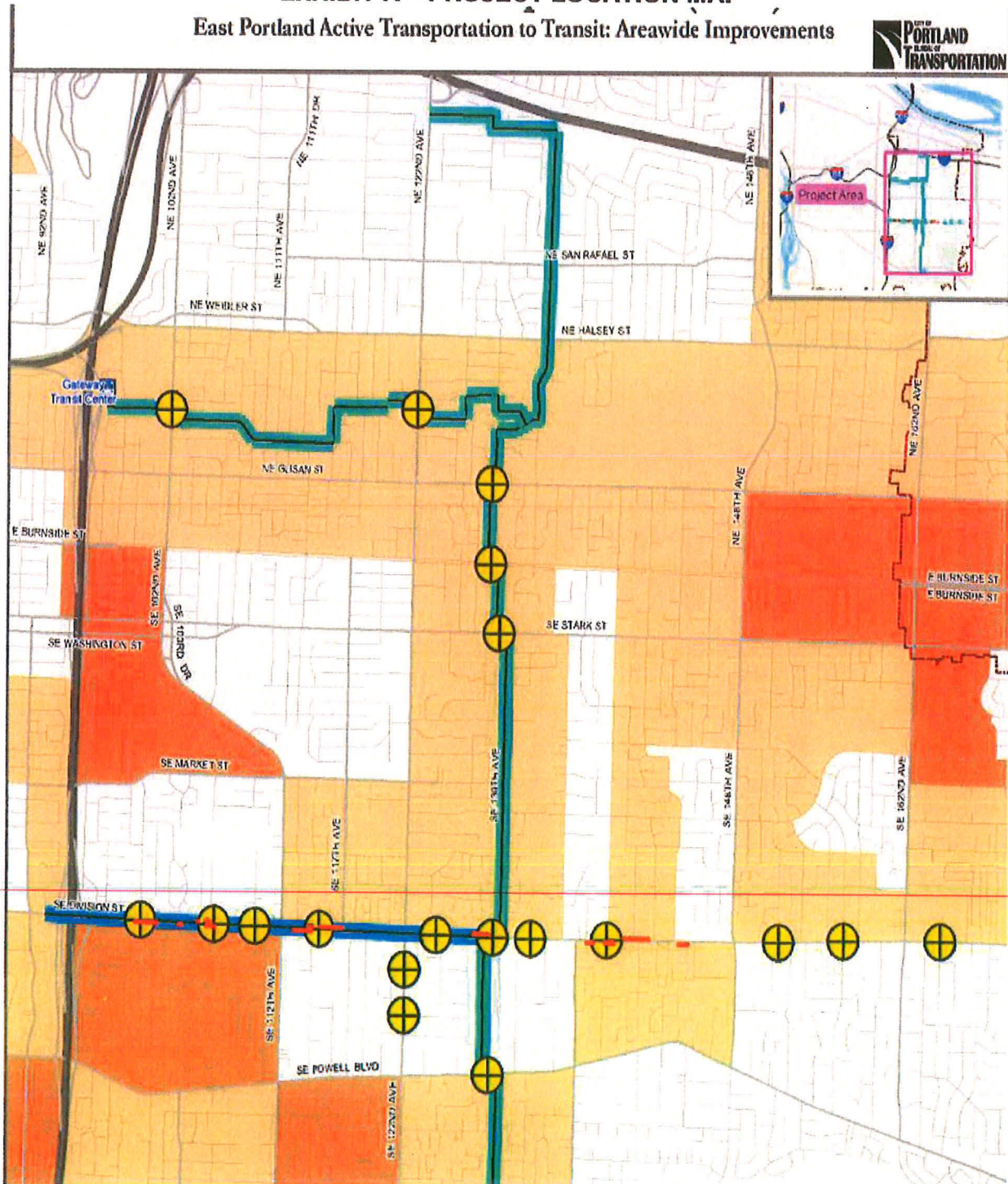
By _____
Assistant Attorney General

Date _____

State Contact:

Bret Richards, Local Agency Liasion
Oregon Department of Transportation
123 NW Flanders Street
Portland, OR 97209
503.731.8276
bret.n.richards@odot.state.or.us

EXHIBIT A – PROJECT LOCATION MAP
East Portland Active Transportation to Transit: Areawide Improvements



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EXHIBIT B - PROJECT KEY MILESTONES AND SCHEDULE**Agreement No. 28473****Application Number: TT-1-003****Project Name: East Portland Access to Transit****1. Project Description**

This project completes the final design and construction of an approximately 825 square foot Bike and Ride facility at the Gateway Transit Center. Project also includes bus stop improvements for up to eight bus stops on SE Division and SE 122nd Avenue in Portland. Improvements will include either additional right-of-way acquisition or curb extensions to provide space for amenities including seating, shelters, ADA landing PADS, street trees, and increased space for transit riders.

2. This Project is subject to progress reporting and project change process as stated in paragraphs No. 3 through No. 6 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 full 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	Completion Date
1	Obligation (Federal Authorization) of STP Flexible Funds for the Preliminary Engineering phase of Project	9/30/2012
2	Obligation (Federal Authorization) of STP Flexible Funds for the Construction phase of Project	9/30/2013
3	Project Completion based on State issuing Project Acceptance or "Second Note"	12/31/2014

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5. **Project Change Request (PCR) Process** - City must obtain approval from State's Contact and State's STP Flexible Funds Program Manager for changes to the Project's scope, schedule, or budget by submitting a PCR as specified in paragraphs 5a and 5b, below. City shall be fully responsible for all costs attributable to changes to the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.
- a. **Scope** - A PCR is required for a change 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).
6. **PCR Form** - 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 PCR may be rejected at the discretion of State's Flexible Funds 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>

7. **Consequence for Non-Performance** - If City fails to fulfill its obligations in Paragraphs No. 3 through No. 6 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of City's default may include: (a) restricting City consideration for future funds awarded through State's Active Transportation Section, then (b) withdrawing unused Project funds, and then (c) terminating this Agreement as stated in Terms of Agreement, Paragraphs No. 20a and 20b of this Agreement.