

Misc. Contracts and Agreements No. 29221
Cross Ref. Master Certification Agreement No. 26586

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 29221
SAFE ROUTES TO SCHOOL PROGRAM
INFRASTRUCTURE PROJECT
Pedestrian Crossings at 4 Schools (Portland)
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 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.
2. The Transportation Alternatives Program (TAP) is a federal-aid program of the Federal Highway Administration (FHWA) through funding from the Moving Ahead for Progress in the 21st Century Act (MAP-21).
3. The Safe Routes to School (SRTS) Program is a state program administered by State's Transportation Safety Division. The "Infrastructure" portion of the program is managed by the Transportation Development Division, Active Transportation Section.
4. NE Skidmore Street, NE Prescott Street, NE 66th Avenue, NE 68th Avenue, SE 92nd Avenue, SE 97th Avenue, SE 122nd Avenue, SE Harold, SE Holgate, SE Stephens Street, and SE Lincoln Street are part of the City's street system under the jurisdiction and control of City.
5. The schools to benefit under this Agreement are: Harvey Scott, Lent, Prescott, and Mill Park Elementary Schools. The city streets that will be improved under this Agreement are part of the city street system and under the jurisdiction and control of City.
6. The project identified in 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. 26586.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

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TERMS OF AGREEMENT

1. Under such authority, State and City agree to make infrastructure improvements consisting of curb extensions, pedestrian refuge islands, and a school frontage curb/sidewalk at four (4) Portland area schools, 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.
2. The Project shall be conducted as a part of the State's SRTS Program. The funds for this Project are provided through the Transportation Alternatives Program (TAP) under Title 23, United States Code, from the suballocation for areas with population greater than 200,000. The total estimated cost of the Project is \$508,000, which is subject to change. The TAP Funds are estimated at \$455,828, with City providing the match and any non-participating costs, including all costs in excess of the available federal funds. The scope, schedule, progress report requirements, and Project Change Request process are described in Exhibit B, attached hereto and by this reference made a part hereof. City agrees to the conditions set forth in Exhibit B.
 - a. City must obtain approval from State's TAP Manager in consultation with Metro Transportation Improvement Program for any additional funds beyond the TAP funding amount of \$455,828, in Paragraph number 2 above.
 - 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.
3. 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 \$8,000. 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 2, 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.
4. 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 TAP or SRTS funds until State receives full reimbursement of the cost incurred.

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5. City shall submit Monthly Progress Reports following the process as listed in Exhibit B.
6. 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 on this Project shall be performed only by City's Bureau of Transportation.
7. 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.
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 five (5) calendar years following the date all required signatures are obtained, whichever is sooner.
10. Certification Program Agreement No. 26586 was fully executed on September 6, 2012. This Agreement is subject to the terms and provisions of the Certification Program Agreement.
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 service demand. State and City agree that the useful life of this Project is defined as twenty (20) years. 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.
12. This Agreement may be terminated by mutual written consent of both Parties.
13. 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.
14. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
15. 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.
16. State's Safe Routes to School and Transportation Alternatives Program Manager is Patricia Fisher, Active Transportation Section, 555 13th Street NE, Suite 2, Salem, OR 97301, 503-986-3528, patricia.r.fisher@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.
17. State's Project Liaison for this 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.
18. City's Project Liaison for this Agreement is Winston Sandino, 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.
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 Agreement No. 26586, and 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,

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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 2012-2015 Statewide Transportation Improvement Program, (Key #16253) that was adopted by the Oregon Transportation Commission on March 21, 2012 (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** **APPROVED AS TO FORM**

By James H. Van Dyke
City Legal Counsel
CITY ATTORNEY

Date 2/22/13

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

By _____
Transportation Safety Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Active Transportation Section Manager

Date _____

By [Signature]
Region 1 Manager RED MILLER FOR JASON TELL

Date 7-17-13

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

City Contact:

Winston Sandino
City of Portland Transportation
1120 SW 5th Avenue, Room 800
Portland, OR 97204
503-823-5767
winston.sandino@portlandoregon.gov

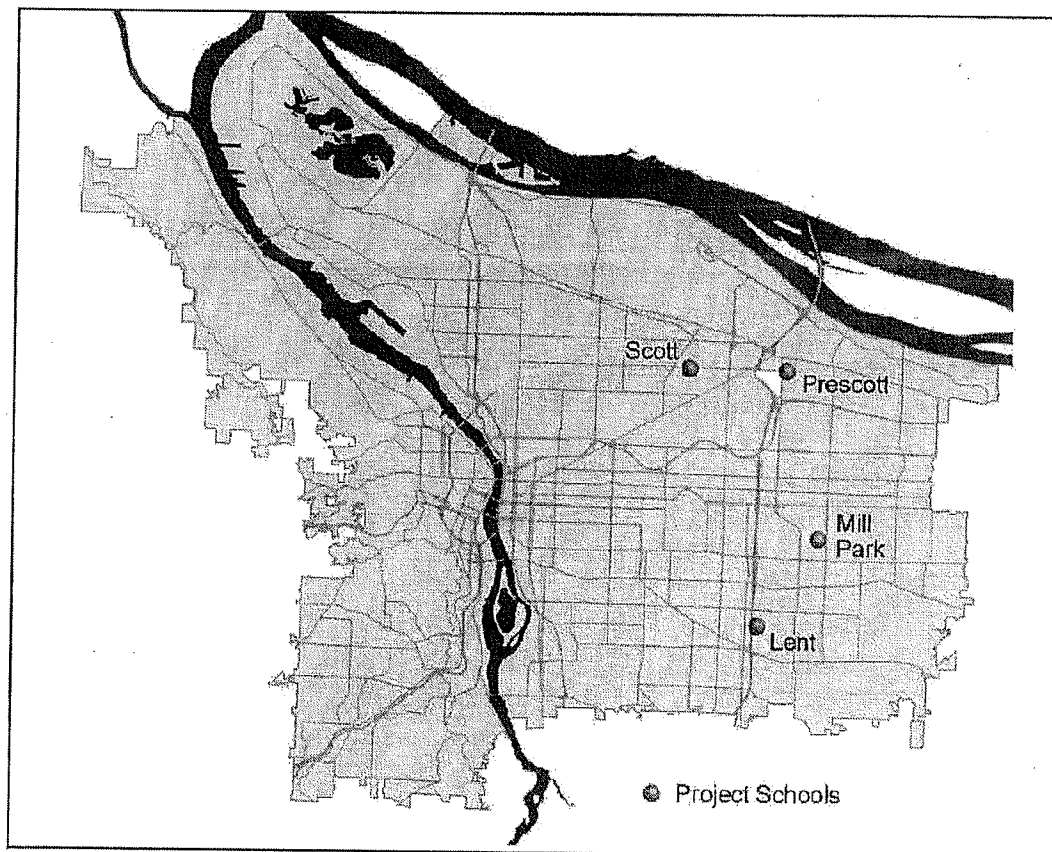
State Contact:

Bret Richards
Oregon Department of Transportation
123 NW Flanders St
Portland, OR 97209
503-731-8288
bret.n.richards@odot.state.or.us

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EXHIBIT A – PROJECT LOCATION MAP

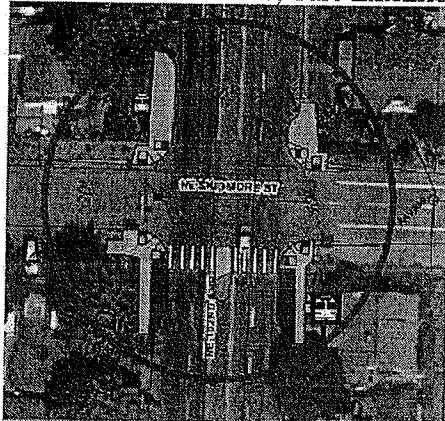
VICINITY MAP



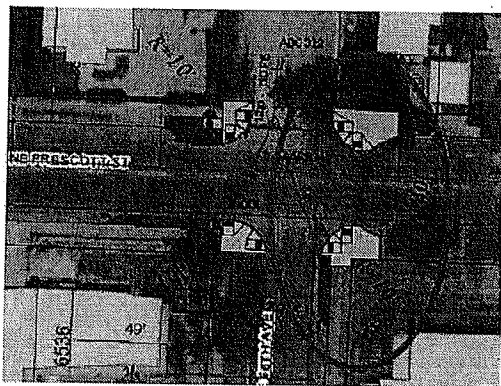
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SITE MAPS

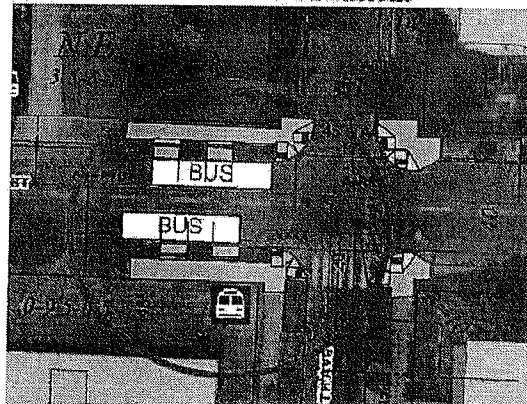
Prescott Elementary
NE 102nd and Skidmore, Curb Extensions and Refuge Island



Harvey Scott Elementary
Prescott at 66th east side Curb Extensions



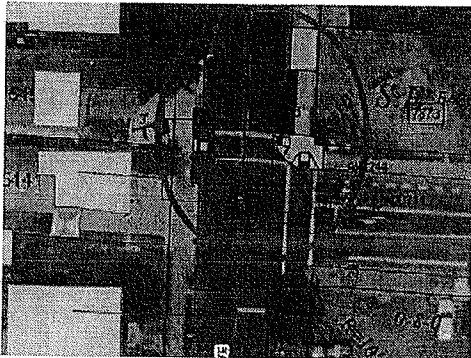
Prescott at 68th west side Curb Extensions



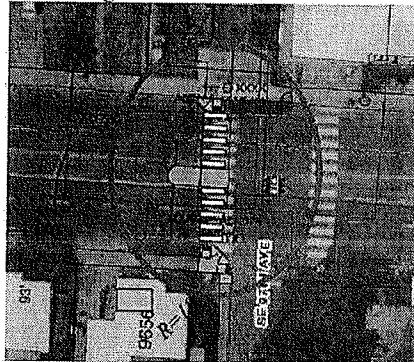
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SITE MAPS (continued)

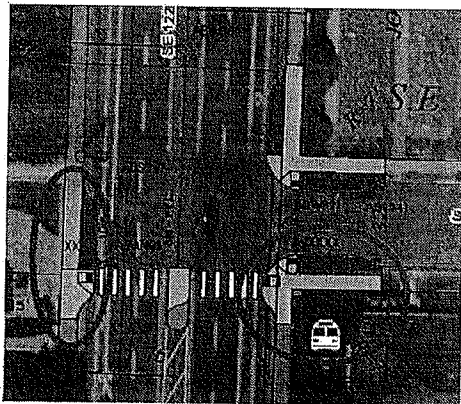
Lent Elementary
SE 92nd at Harold Curb Extensions



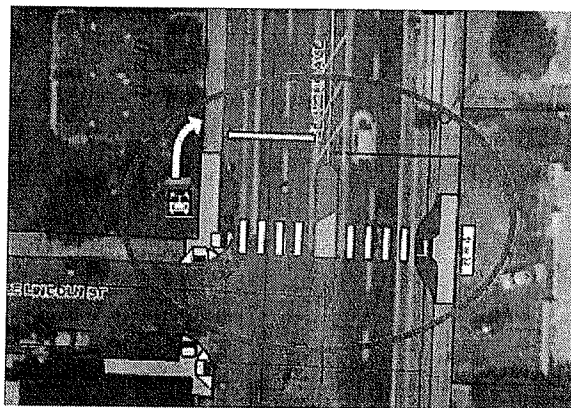
**SE Holgate at 97th Curb Extensions
and Refuge Island**



Mill Park Elementary
SE 122nd at Stephens Curb Extensions



**SE 122nd at Lincoln Curb Extensions
and Refuge Island**



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EXHIBIT B - PROJECT KEY MILESTONES AND SCHEDULE

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Key Number: 16253

Project Name: Pedestrian Crossings at Four (4) Schools (Portland)

1. Project Description

This Project includes infrastructure improvements at four (4) Portland area schools:

- a. Harvey Scott K-8 School - install curb extensions at NE Prescott/66th intersection (NE and SE corners); and at NE Prescott/68th intersection (NW and SW corners)
 - b. Lent K-8 School - install curb extensions
 - c. SE 92nd/Harold intersection (NE and NW corners) and at SE 97th/Holgate intersection (NW and SW corners) - install a pedestrian refuge island at SE 97th/Holgate intersection (west side).
 - d. Mill Park School - install curb and sidewalk on SE 117th Avenue along the school frontage; install a pedestrian refuge and two (2) curb extensions at SE 122nd/Lincoln St. intersection (north side); and install curb extensions at SE 122nd/Stevens intersection (SW and SE corners).
 - e. Prescott Elementary – install a pedestrian refuge and four curb extensions at NE 102nd/Skidmore intersection.
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 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 funds for the Preliminary Engineering phase of Project	9/30/2013
2	Obligation (Federal Authorization) of Funds for the Right-of-Way phase of the Project	3/31/2014
3	Obligation (Federal Authorization) of funds for the Construction phase of Project	9/30/2014
4	Project Completion based on State issuing Project Acceptance or "Second Note"	8/31/2015

5. **Project Change Request (PCR) Process** - City must obtain approval from State's Contact and State's Safe Routes to School Program Manager for changes to the Project's scope, schedule, or budget 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 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).

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 Safe Routes to School 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 City is responsible for under 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. 13a and 13b of this Agreement.