

Misc. Contracts and Agreements No. 28129
Cross Ref. Master Certification Agreement No. 26586

AMENDMENT NUMBER 01

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

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," entered into an Agreement on June 5, 2012. Said Agreement covers City constructing a six-foot wide sidewalk with curb ramps, curb extensions, and four-foot wide planting strips on the north side of Holgate Boulevard and the south side of Ramona Street.

It has now been determined by State and City that the Agreement referenced above shall be amended to reference the current Local Agency Master Certification Agreement, and update Project Milestones. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

RECITALS, Paragraph No. 1, Page 1, which reads:

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.

Shall be deleted in its entirety and replaced with the following:

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.

RECITALS, Paragraph No. 3, Page 1, which reads:

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.

City/State
 Agreement No. 28129-01

Shall be deleted in its entirety and replaced with the following:

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. 26586.

TERMS OF AGREEMENT, Paragraph 2, Page 2, which reads:

2. The total estimated cost of the Project is \$1,593,000 which is subject to change.

Shall be deleted in its entirety and replaced with the following:

2. The total estimated cost of the Project is \$1,506,500, which is subject to change.

TERMS OF AGREEMENT, Paragraph 3, Page 2, which reads:

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 and the Metro Transportation Improvement Program 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.

Shall be deleted in its entirety and replaced with the following:

3. The Project shall be conducted as a part of the Transportation Enhancement Program under Title 23, United States Code. Transportation Enhancement funds for

City/State
 Agreement No. 28129-01

this Project shall be estimated at \$1,351,800 and may be used for all phases 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 and the Metro Transportation Improvement Program 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.
- 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.

TERMS OF AGREEMENT, Paragraph 5, Page 2, which reads:

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.

Shall be deleted in its entirety and replaced with the following:

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. 26586. City agrees that consultant selection, design, advertising, bid, award the construction contract, and construction administration for City's federal-aid projects shall be performed only by City's Bureau of Transportation, Development and Capital Group and Engineering Services.

TERMS OF AGREEMENT, Paragraph 9, Page 3, which reads:

City/State
 Agreement No. 28129-01

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.

Shall be deleted in its entirety and replaced with the following:

9. 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 Master Certification Program Agreement.

TERMS OF AGREEMENT, Paragraph 18, Page 5, which reads:

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.

Shall be deleted in its entirety and replaced with the following:

18. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 26586, 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.

EXHIBIT B, Paragraph No. 4 Project Milestones, Page 8, which reads:

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

City/State
 Agreement No. 28129-01

	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

Shall be deleted in its entirety and replaced with the following:

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 Right-of-Way phase of the Project	September 15, 2013
3	Obligation (Federal Authorization) of Enhancement Funds for the Construction phase of Project	April 1, 2014
4	Project Completion based on State issuing Project Acceptance or "Second Note"	December 31, 2014

This Amendment 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 Amendment so executed shall constitute an original.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

City/State
Agreement No. 28129-01

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #17888) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

CITY OF PORTLAND, acting by and through its elected officials

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

By _____
Mayor

By _____
Highway Division Administrator

Date _____

Date _____

By _____
City Recorder

APPROVAL RECOMMENDED

Date _____

By _____
Active Transportation Section Manager

APPROVED AS TO LEGAL SUFFICIENCY

Date _____

APPROVED AS TO FORM

By Jane H. Van Dyke
City Legal Counsel

By Navan Chud
Region 1 Manager

Date _____
CITY ATTORNEY 10/18/13

Date 10/9/2013

By Sam Hernandez
Project Services Manager

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

Date 10-08-13

APPROVED AS TO LEGAL SUFFICIENCY

State Contact:
Bret Richards, Local Agency Liaison
123 NW Flanders Street
Portland, OR 97209
(503) 731-8288
bret.n.richards@odot.state.or.us

By _____
Assistant Attorney General

Date: _____