

EXHIBIT 1

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Oregon Department of Land Conservation and Development 635 Capitol Street N.E. Salem, Oregon 97301 2013-2015 Grant Contract	Date December 11, 2013
	Type of Grant Periodic Review
Grantee Name City of Portland Bureau of Planning and Sustainability	Grant No. PR-15-157
Street Address 1900 S.W. 4th Avenue, Suite 7100 Portland, Oregon 97201	DLCD Share of Cost \$80,000.00
Closing Date December 31, 2014	Grantee Share of Cost (if applicable) Not Required
Last Date to Amend Grant per Standard Condition 16:	Total Cost \$80,000.00
Project Title "System Completeness as a Multi-Modal Transportation Strategy."	
Grantee Representative Al Burns, Senior City Planner Phone: 503.823.7832 a.burns@portlandoregon.gov	DLCD Representative Anne Debbaut, DLCD Grant Manager Phone: 503.725.2182 anne.debbaut@state.or.us

This State of Oregon grant Contract herein referred to as Contract, and is by and between the Department of Land Conservation and Development, herein referred to as DLCD, and the City of Portland herein referred to as Grantee.

This Contract, approved by the Director of the Department of Land Conservation and Development, acting on behalf of the Land Conservation and Development Commission, is issued in a single document and constitutes an obligation of funds in return for the work described herein. By signing the document, Grantee agrees to comply with the grant provisions checked below and attached. Upon acceptance by Grantee, the signed complete document shall be returned to DLCD by email per the instructions in the accompanying cover letter.

Grantee shall return the sign copy of the contract to DLCD by email within thirty (30) days of the date at the top of this page. If not signed and returned and without modification by Grantee within thirty (30) days of receipt, the DLCD Grant Program Manager may unilaterally terminate the grant award. Upon receipt of the signed Contract the DLCD Grant Program Manager shall sign and return one copy to Grantee.

The Effective Date of this Contract is the latest date on which all parties have signed this Contract and all necessary approvals have been obtained by the "Effective Date."

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Funds provided under this Contract can only be used for expenditures incurred on or after the Effective Date and on or before the Closing Date specified above. This grant may be amended according to the policies and procedures of DLCD, and with the Contract of all parties to the Contract, but the Closing Date shall not be later than December 31, 2014.

This Contract consists of the required signatures and attachments listed and checked below. The attachments are listed in descending order of precedence. In the case of any conflict among the documents, the document with the higher precedence shall control.

Components of the Contract and required signatures are below.

- ☒ Department of Land Conservation and Development Special Award Conditions
- ☒ Department of Land Conservation and Development Standard Award Conditions
- ☒ Attachment A: Grantee Grant Application and Narrative
- ☒ Attachment B: Contact Names and Addresses
- ☒ Attachment C: Request for Reimbursement Form and Instructions
- ☒ Attachment D: Periodic Review Assistance Team (PRAT) Names and Addresses
- ☒ Attachment E: Regional Solutions Team (RST) Names
- ☒ Attachment F: DLCD Order 001837 and Report EOA and BLI dated May 29, 2013

Print Name of Authorized Official For the Grantee	Title	Date
Signature of Authorized Official For the Grantee		
Print Name of DLCD Grant Program Manager Rob Hallyburton	Community Services Manager	Date
Signature of DLCD Grant Program Manager		

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT SPECIAL AWARD CONDITIONS

Subject to any applicable debt limitation set forth in Article XI, Section 10, of the Oregon Constitution, by city charter or otherwise, and contingent upon funds being appropriated by the Legislative Assembly and sufficient allotment authority therefore, Grantee agrees to the provisions below.

1. Grantee agrees that this grant, number PR-15-157, to the City of Portland supports the work described in the Grantee's grant application (the "Project" or the "Work"), which is incorporated into this Contract as Attachment A, Grantee Grant Application and Narrative. Where the terms of the other Contract documents and Attachment A differ, Attachment A will be given the priority set forth above and these special award conditions shall prevail.
2. Grantee agrees that all reports, studies, and other documents produced under this scope of work must indicate on the cover or the title page an acknowledgement of the financial assistance provided by DLCD and Bear the following statement: "This project is funded by Oregon general fund dollars through the Department of Land Conservation and Development. The contents of this document do not necessarily reflect the views or policies of the State of Oregon."
3. Grantee agrees to identify the location of the originals of any Product(s) if the copy is submitted to DLCD or if the Product(s) is one-of-a-kind document.
4. Grantee agrees that the term digital media means a Compact Disk (CD), Digital Video Disc (DVD), USB Flash Drive, email with submittal attachments, or upload of the submittal to the DLCD FTP site authorized by the Grant Administrative Specialist.
5. Grantee agrees to first obtain DLCD approval of any chosen facilitator (consultant), before approving a facilitator (consultant), and signing a local agreement or local contract to perform all or a portion of the Project.
6. Grantee agrees to provide a legible copy of the signed local agreement or local contract between the jurisdiction and the facilitator, no later than three business days after both parties have signed the local agreement or local contract.
7. Grantee agrees to complete the following by: February 14, 2014
 - a. Identify by name, address, telephone, and email address, those person(s) who will be performing the Project Work and which of tasks listed under the Scope of Work for this Contract ("Work Tasks") they will work on.
 - b. List each step that will be taken to complete each Product(s) delivered in connection with the Work Step(s).
 - c. Provide a specific and descriptive explanation of each "Product" to be delivered under a Work Step.

8. Grantee agrees in performing the Project under this Contract, to ensure consistent, coordinated use of population, employment, housing, and land needs projections associated with the following activities:
 - The periodic review work programs and related steps
 - The transportation system plans being prepared pursuant to OAR chapter 660, division 12.
9. Grantee agrees to submit a request to DLCD to revise the periodic review work program if it is determined necessary by the DLCD Grant Manager, if there is an amendment to the activities and products of this Contract that are different from their approved periodic review program.
10. Grantee agrees that any periodic review work task final products must be first proposed under Attachment D, DLCD Form 1 Notice of Proposed Change pursuant to OAR 660-025-0080 at least 35 days before the first evidentiary hearing and will be adopted by the governing body and submitted under Attachment E, DLCD Form 6 Periodic Review Adopted Submittal Form, pursuant to OAR 660-025-130(1).
11. Grantee agrees that any final Product(s) (i.e., ordinances, maps, websites, databases, supporting documents, and photographs) shall be accompanied by a report indicating how the product informs Tasks 3, 4, and 5 of the periodic review work program.
12. Grantee agrees to coordinate and provide notice to DLCD, ODOT, Metro, Washington County, TriMet, and any other agencies, and organizations listed in Attachment A of public meeting(s), workshop(s), work session(s), and/or hearing(s) to develop, review or approve products prepared under this Contract.
13. Grantee agrees to provide for timely review of all draft Product(s), and non-related draft Product(s), in consultation with the DLCD Grant Manager, to DLCD, affected agencies and organizations for review and comment.
14. Grantee agrees to submit a written report at the request of the DLCD Grant Manager at any time outside of the payment schedule in addition to the reports submitted with Attachment C upon the Grant Manager's request.
15. Grantee agrees that DLCD will provide no more than one interim payment before the Closing Date and a final payment, and agrees that payments will be made only upon submittal of qualifying Product(s) and progress report(s) in accordance with the terms of Attachment C to this Contract. The report(s) must describe the progress to date on each Work Step(s) or Product(s) undertaken during the billing period. Other written or verbal progress reports will be provided upon reasonable request by the DLCD Grant Manager.
16. Grantee agrees and understands that payments under this Contract will be reduced if Work Step(s) or Product(s) or both Work Step(s) and Product(s) scheduled to be completed are not completed by the Consultant and Grantee by the timeline provided in the Scope of Work. Grantee further understands and agrees that DLCD's payment obligations under this Contract are conditioned upon DLCD's receiving funding, appropriations, limitations, allotments or other expenditures authority sufficient to allow DLCD in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract.

17. Grantee agrees to utilize the Economic Opportunities Analysis (EOA) and Buildable Lands Inventory (BLI) approved by DLCD Director's Order 001837 and affirmed by the Land Conservation and Development Commission on September 26, 2013 when identifying and designating suitable types and quantities of employment and residential land.
18. Grantee agrees that if a new comprehensive map or zoning map is created or an existing map is revised or updated the product(s) need to be submitted in an electronic form compatible with the Environmental Systems Research Institute's (ESRI) ArcGIS (Coverage, Shapefile and Geodatabase)
19. Grantee agrees GEO/GIS data should be free of topological errors and metadata compliant with the current State of Oregon Metadata Standards accessible at <http://www.oregon.gov/DAS/CIO/GEO/pages/standards/standards.aspx> under the page Oregon GIS Data Standards. The projection of the data may be determined by the jurisdiction. All data should have the projection defined with the dataset and must be documented in the metadata.
20. Grantee agrees that DLCD may display appropriate Product(s) on its web interface or corporate GIS data generated under this Contract and any additional data provided that is not specifically restricted into state agency databases, acknowledging that Grantee and agents of Grantee are not responsible for the accuracy of such data. DLCD may also share the data specifically generated under this Contract with other agencies and organizations, as this is data that DLCD owns as Work Product(s) under Standard Award Conditions Number 5.
21. Grantee agrees that, with the approval of the DLCD Grant Manager in writing, if GEO/GIS capability is not available to the City of Portland than a detailed map legible when printed on approximate size of 8-inch by 11.5-inch paper, in a digital media form, as described in Special Award Condition 4, will be accepted.
22. Grantee agrees to produce and submit to DLCD those Product(s) as specified in this Contract, including but not limited to those Products further described in Grantee's Grant Application Narrative or Scope of Work.
23. Grantee agrees to not use or charge grant funds provided under this Contract for any regular scheduled or other scheduled meetings and hearings. Grantee must use its own funds, or in-kind contributions for all regularly scheduled or other scheduled meetings and hearings.
24. Grantee agrees to provide copies of all final Product(s) produced under this Contract to DLCD in the manner described in the following Scope of Work and in Attachment A, Grantee's Grant Application and Narrative.

Scope of Work

Project Purpose Statement

The project title is "System Completeness as a Multi-Modal Transportation Strategy."

The Grantee, in cooperation with city, regional and state partners, will test a multi-modal transportation strategy. This strategy was described, but not employed, during the last periodic review grant cycle. This application is for a "proof of concept" test of a multimodal transportation strategy based on system completeness.

The Products are designed to inform and influence the update of city street design designations, street functional classifications, and multi-modal transportation service level standards, which are components of Tasks 3 (map) and 4 (policy) of Grantee's periodic review work program; and the update of development review regulations and the transportation system financial plan which are components of Task 5 (implementation) of the work program.

Project Overview and Management

Overall management of the Project will be the responsibility of the Grantee, and assisted by the DLCD Grant Manager. Specific Project management duties of the Grantee will include:

- a. Organizing and managing the advisory committee;
- b. Selecting a consultant and Contracting for consultant services;
- c. Overseeing consultant work described in this scope of work;
- d. Scheduling and managing meetings, including activities such as, preparing and distributing meeting notices, agendas, and summaries; and assisting the consultant with meeting facilitation.

Advisory Committees

The Project will employ a Technical Advisory Committee (TAC) composed of local government and state agency staff and others identified by the Grantee.

The role of the TAC is to review Project materials and advise on technical issues throughout the project. TAC members shall generally consist of representatives from City of Portland Bureau of Transportation and Bureau of Planning and Sustainability, Metro, TriMet, Oregon Department of Transportation (ODOT) and Washington County, DLCD, and the Project consultant.

Additional representatives from other affected agencies and organizations may serve as recommended by TAC members.

The TAC will meet on a regular basis to review technical analysis and recommendations prepared by the Grantee's staff and the consultant. Individual TAC members will be responsible for communicating with officials from their respective jurisdictions and to assure that policy issues are incorporated into technical work at the appropriate time and in the most effective way. The Project will not use a policy advisory committee. Instead, members of the TAC will be responsible for reviewing technical analysis with their respective planning commissions and elected officials. TAC members must also inform other Project participants (TAC, consultant, agency Contract administrator) of policy issues and implications raised by local decision-makers that may affect the technical analysis or assumptions used in the analysis.

Agency Role

DLCD will provide financial, administrative, and technical assistance to the Project. DLCD supports the collaborative, regional approach envisioned in the Project and agrees to work equally and fairly with each jurisdiction to help assure that state and local interests are optimized. DLCD recognizes the Project will inform, but will not bind, future land use decisions of the cooperating jurisdictions.

Consultant Role

The Project will use consultant services to perform technical analysis related to the Project. The consultant is expected to attend regular meetings of the TAC and to assist local planning staff in presentations to planning commissions and elected officials.

Project Meeting Materials

Written Project documents or memorandum prepared by the consultant shall be provided to the Grantee in digital format (.pdf and .doc) one week prior to any scheduled TAC meeting.

Grantee shall prepare meeting agendas and summaries for each TAC meeting. Grantee shall distribute meeting materials electronically to project committee members at least five (5) working days prior to any scheduled meeting.

Project Deliverables Schedule

The deliverables or "Products" or "Work Products" schedule identified throughout this scope of work refers to months after when the Contract's Effective Date.

Expectations about Written and Graphic Deliverables

In accord with Special Award Condition 2, all reports, studies, and other documents produced under this scope of work must indicate on the cover or the title page an acknowledgement of the financial assistance provided by DLCD.

The consultant shall provide the final Products to the Grantee on digital media as described in Special Award Condition 4. Grantee shall reproduce and distribute digital media of the final Products to DLCD, ODOT, Metro, Washington County, and TriMet.

Work Program and Timeline**Task: System Completeness as a Multi-Modal Transportation Strategy**

This task will test a "system completeness" strategy designed to add and improve transportation facilities as the City grows. While strict concurrency might not be achieved; overall, the amount growth and the amount of needed supporting transportation infrastructure would balance during the plan period.

The qualification "overall" is an important one. A system completeness strategy will fail if growth occurs in one part of the City while facilities are provided in another. Similarly, discontinuous frontage improvements provided at the time of development might not compose a complete system within the planning period. Clearly, "completeness" needs to be provided at the right scale. City-wide is too large, while the individual parcel is too small. This grant will explore two scales, districts with fixed boundaries and impact areas with flexible boundaries.

1. Fixed-Boundary Districts
As described in Attachment A – Application Narrative Section on Page 3.
2. Flexible-Boundary Impact Areas
As described in Attachment A – Application Narrative Section on Page 3.
3. Funding by Impact Fees
As described in Attachment A – Application Narrative Section on Page 3.

Task Steps The following are the steps that would be used to test the practicality of district impact fees:

1. Define Districts and Impact Area.
As described in Attachment A – Application Narrative Section on Page 4.
2. Calculate Total Transportation District Needs.
As described in Attachment A – Application Narrative Section on Page 4.
3. Calculate Total Transportation District Costs
As described in Attachment A – Application Narrative Section on Page 4.
4. Calculate New Trips Generated.
As described in Attachment A – Application Narrative Section on Page 4.
5. Calculate District Impact Fee per New Trip by Mode. .
As described in Attachment A – Application Narrative Section on Page 5.
6. Determine Proportional Development Responsibility.
As described in Attachment A – Application Narrative Section on Page 5.
7. Proof of Concept.
As described in Attachment A – Application Narrative Section on Page 5.

Additional Considerations

When performing the seven task steps above, the following will also need to be considered.

1. Future Comprehensive Plan Amendments
As described in Attachment A – Application Narrative Section on Page 5 and 6.
2. Frontage Improvements
As described in Attachment A – Application Narrative Section on Page 6.
3. Development Allowed By Right
As described in Attachment A – Application Narrative Section on Page 6.
4. System Development Charges
As described in Attachment A – Application Narrative Section on Page 6.
5. Other Proportionality Anomalies
As described in Attachment A – Application Narrative Section on Page 7.
6. Non-Frontage Improvements
As described in Attachment A – Application Narrative Section on Page 7.
7. Costs borne by Existing Development
As described in Attachment A – Application Narrative Section on Page 7.
8. Revenue Sharing
As described in Attachment A – Application Narrative Section on Page 8.
9. Equity
As described in Attachment A – Application Narrative Section on Page 8.

Task Conclusion: This grant task is designed to either prove or disprove of concept of using a district project lists and impact fees to build complete multi-modal transportation systems. The grant will determine whether the concept is practicable. The acceptance of the grant would not commit the City to change any particular plan, policy. Even if the concept proved practicable, the Portland City Charter reserves to the city council alone the decision to adopt an impact fee.

Task Deliverables:

1. Identification of Grantee's personnel authorized to perform project work
2. Identification of persons asked to serve as members of the Technical Assistance Committee
3. Listing of steps that will be taken to complete the project work
4. Roster of TAC members and contact information
5. Definition of districts and impact areas
6. Calculation of total transportation district needs, and costs
7. Calculation of new trips generated
8. Calculation of district impact fee per new trip by mode
9. Determination of proportional development responsibility
10. Proof of concept with discussion of additional considerations

Grant Timeline:

Project work will begin after effective date of city ordinance authorizing the mayor to sign the grant award. All grant work will be completed by **December 31, 2014**.

Budget Summary

Project work is a single task. \$40,000 of the grant award will be designated for Grantee personnel and \$40,000 will be designated for a consultant contractor.

Task – System Completeness as a Multi-Modal Transportation Strategy	\$ 80,000
TOTAL	\$ 80,000

REPORT AND PAYMENT SCHEDULE

R1 Initial Report 1

Grantee will submit the following Work Products by **February 14, 2014**, as described in the Department of Land Conservation and Development Special Award Conditions Number 7.a-7.c

1. Identification of Grantee's personnel authorized to perform project work;
2. Identification of persons asked to serve as members of the Technical Assistance Committee;
3. Listing of steps that will be taken to complete the project work.

Grantee will send the Work Product(s) in digital media as described in the Department of Land Conservation and Development Special Award Conditions Number 4 to the Grant Administrative Specialist and the Grant Manager at the addresses listed in Attachment B, DLCD Contact Information.

R2 Interim Report 2

Grantee will submit the following Work Products by **June 20, 2014**:

1. Establish technical assistance committee
2. Hire consultant contractor
3. Definition of districts and impact areas – Step 1
4. Calculation of total transportation district need – Step 2
5. Calculation of total transportation district costs – Step 3

Grantee will send the Work Product(s) in digital media as described in the Department of Land Conservation and Development Special Award Conditions Number 4 to the Grant Administrative Specialist and the Grant Manager at the addresses listed in Attachment B, DLCD Contact Information.

P1 Interim Payment

Reimbursement up to \$40,000 upon submittal of Work Products listed in **R2 -Interim Report 2 (Steps 1, 2, and 3) and verification of R1 – Initial Report** and a signed Attachment C, Interim Reimbursement Form, acceptable to DLCD.

Grantee will send the Work Product(s) in digital media as described in the Department of Land Conservation and Development Special Award Conditions Number 4 to the Grant Administrative Specialist and the Grant Manager at the addresses listed in Attachment B, DLCD Contact Information.

Payment will not be made until the signed form and the Work Products submitted with the Interim Report (R2) report and verification of Initial Report (R1) are received in the Salem office and approved by Grant Manager.

R3 Final Report

Grantee will submit the following Work Products on or before December 31, 2014:

1. Calculation of new trips generated – Step 4
2. Calculation of district impact fee per new trip by mode – Step 5
3. Determination of proportional development responsibility – Step 6
4. Proof of concept with discussion of additional considerations – Step 7

FP Final Payment

Reimbursement up to \$40,000 upon submittal of Work Products listed in R3 - Final Report (Steps 4, 5, 6, and 7); and a signed Attachment C, DLCD Interim Reimbursement Form, acceptable to DLCD.

Grantee will send the Work Product(s) in digital media as described in the Department of Land Conservation and Development Special Award Conditions Number 4 to the Grant Administrative Specialist and the Grant Manager at the addresses listed in Attachment B, DLCD Contact Information.

Payment will not be made until the signed form and the Work Products submitted with the Final Report (R3) report and are received in the Salem office and approved by the Grant Manager.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT STANDARD AWARD CONDITIONS

Subject to any applicable debt limitation set forth in Article XI, Section 10, of the Oregon Constitution, by city Charter or otherwise, and contingent upon funds being appropriated by the Legislative Assembly and sufficient allotment authority therefore, Grantee agrees to the provisions below.

1. **DLCD Funds:** DLCD certifies that on the Effective Date of this grant sufficient funds are authorized, available, and set-aside, Subject to the provision of ORS 291.261.
2. **Reporting:** At any time before the Closing Date, when requested by the DLCD Grant Manager, Grantee shall provide a written report on the status and progress of Work performed under this Contract within a mutually agreed time frame.
3. **Payments:** DLCD payments to Grantee under this Contract shall be made in accordance with the grant payment schedule described in the "Special Award Conditions Product(s), Activities, or Payments Table or Scope of Work" of this Contract. Payment is contingent upon DLCD's acceptance of the Product(s) or Work Product(s) produced under the Contract. Grantee agrees that reimbursement of all amounts requested by Grantee is contingent upon compliance with all the terms and conditions of this Contract.
4. **Penalty:** Payments to Grantee may be withheld or reduced if DLCD determines that work performed under this Contract is unsatisfactory, based on the best professional judgment of the DLCD Grant Manager, or if one or more terms or conditions of this Contract have not been met to the extent required by law.
5. **Ownership of Work Product(s).**
 - a. **Definitions.** As used in this Paragraph 5 and elsewhere in this Contract, the following terms have the meanings set forth below:
 - i. **"Grantee Intellectual Property"** means any intellectual property owned by Grantee and developed independently from the Project.
 - ii. **"Third Party Intellectual Property"** means any intellectual property owned by parties other than DLCD or Grantee.
 - iii. **"Product(s)" or "Work Product(s)"** means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Grantee is required to deliver to DLCD pursuant to the Project and this Contract, including but not limited to any Product(s) or Work Product(s) described in Special Award Conditions Number 2.

- b. **Original Works.** All Product(s) or Work Product(s) created by Grantee pursuant to the Project and this Contract, including derivative works and compilations, and whether or not such Work Product(s) is considered a work made for hire or an employment to invent, shall be the exclusive property of DLCD. DLCD and Grantee agree that such original works of authorship are "work made for hire" of which DLCD is the author within the meaning of the United States Copyright Act. If for any reason the original Product(s) or Work Product(s) created pursuant to the Project is not "work made for hire," Grantee hereby irrevocably assigns to DLCD any and all of its rights, title, and interest in all original Product(s) or Work Product(s) created pursuant to the Project, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.
- c. **Upon DLCD's reasonable request,** Grantee shall execute such further documents and instruments necessary to fully vest such rights in DLCD. Grantee forever waives any and all rights relating to original Product(s) or Work Product(s) created pursuant to the Project, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- i. **In the event that Product(s) or Work Product(s)** created by Grantee under this Contract is Grantee Intellectual Property or is a derivative work based on Grantee Intellectual Property is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to DLCD an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Grantee Intellectual Property employed in the Product(s) or Work Product(s), and to authorize others to do the same on DLCD's behalf.
- ii. **In the event that Product(s) or Work Product(s)** created by Grantee under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Grantee shall secure on DLCD's behalf and in the name of DLCD an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Product(s) or Work Product(s), and to authorize others to do the same on DLCD's behalf.
- d. **Grantee Intellectual Property.** In the event that Product(s) or Work Product(s) is Grantee Intellectual Property, Grantee hereby grants to DLCD an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Grantee Intellectual Property, and to authorize others to do the same on DLCD's behalf.
- e. **Third Party Works.** In the event that Product(s) or Work Product(s) is Third Party Intellectual Property, Grantee shall secure on DLCD's behalf and in the name of DLCD, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on DLCD's behalf.

6. Indemnity.

- a. **General Indemnity. Subject to Limitation of State of Oregon Constitution and State of Oregon Tort Claims Act.** Grantee shall defend, save, hold harmless, and indemnify the State of Oregon and DLCD and their Officers, Employees, Agents from and against all Claims, Suits, Actions, Losses, Damages, Liabilities, Costs and Expenses of any Nature whatsoever, including Attorney Fees, resulting from, arising out of, relating to the Activities of Grantee or its Officers, Employees, Subcontractors, or Agents under Contract.
- b. **Indemnity for Infringement Claims. Subject to Limitation of State of Oregon Constitution and State of Oregon Tort Claims Act. Without limiting the generality of section 6.a,** Grantee Expressly agrees to Defend, Indemnify, and hold DLCD, the State of Oregon and their Agencies, Subdivisions, Officers, Directors, Agents, and Employees harmless from any and all Claims, Suits, Actions, Losses, Liabilities, Costs, Expenses, including Attorney's Fees, and Damages arising out of or related to any claims that the Product(s) or Work Product(s) or Work Task(s) or any other tangible or intangible items delivered to DLCD by Grantee that may be the subject of protection under any State or Federal Intellectual Property Law or Doctrine, or DLCD's use thereof, infringes any Patent, Copyright, Trade Secret, Trademark, Trade Dress, Mask Work, Utility Design, or Other Proprietary Right of any Third Party; provided, that State shall provide Grantee with prompt written notice of any infringement claim.
- c. **Control of Defense and Settlement.** Grantee shall have control of the Defense and Settlement of any claim that is subject to sections 6.a or 6.b; however, neither Grantee nor any Attorney engaged by Grantee shall defend the claim in the name of the State of Oregon or any Agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its Agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, Authority to Act as Legal Counsel for the State of Oregon, nor shall Grantee settle any claim on behalf of the State of Oregon without the Approval of the Attorney General. the State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

7. Termination:

- a. **DLCD's Right to Terminate at its Discretion.** At its sole discretion, DLCD may terminate this Contract:
 - i. **For its convenience** upon thirty (30) days' prior written notice by DLCD to Grantee;
 - ii. **Immediately upon written notice** if DLCD fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow DLCD, in the exercise of its reasonable administrative discretion, pay for the Product(s) or Work Product(s) or Work Task(s) hereunder; or
 - iii. **Immediately upon written notice** if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the DLCD's financial assistance under this Grant Contract is prohibited or DLCD is prohibited from paying for the Product(s) or Work Product(s) or Work Task(s) hereunder from the planned funding source.

- b. **DLCD's Right to Terminate for Cause.** In addition to any other rights and remedies DLCD may have under this Contract, DLCD may terminate this Contract immediately upon written notice by DLCD to Grantee, or at such later date as DLCD may establish in such notice, or upon expiration of the time period and with such notice as provided below, upon the occurrence of any of the following events:
- i. **Grantee is in default** because Grantee institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
 - ii. **Grantee is in default** because Grantee commits any material breach or default of any covenant, warranty, obligation or Contract under this grant Contract, fails to perform any of its obligations under this grant Contract within the time specified herein or any extension thereof, or so fails to pursue its work hereunder as to endanger Grantee's performance under this grant Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after DLCD's notice, or such longer period as DLCD may specify in such notice.
- c. **Grantee's Right to Terminate for Cause.** Grantee may terminate this grant Contract with written notice to DLCD upon the occurrence of the following events:
- i. **DLCD is in default** because DLCD fails to pay Grantee any amount due pursuant to the terms of this Contract, and DLCD fails to cure such failure within thirty (30) calendar days after Grantee's notice or such longer period as Grantee may specify in such notice; or
 - ii. **DLCD is in default** because DLCD commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and DLCD fails to cure such failure within thirty (30) calendar days after Grantee's notice or such longer period as Grantee may specify in such notice.
- d. **Return of Property.** Upon termination of this Contract for any reason whatsoever, Grantee shall immediately deliver to DLCD all of DLCD's property (including without limitation any Product(s) or Work Product(s) or Work Task(s) for which DLCD has made payment in whole or in part) that is in the possession or under the control of Grantee in whatever stage of development and form of recordation such property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Grantee shall immediately cease all activities hereunder, unless DLCD expressly directs otherwise in such notice of termination. Upon DLCD's request, Grantee shall surrender to anyone DLCD designates, all documents, research or objects or other tangible things needed to complete the Product(s) or Work Product(s) or Work Task(s).
- e. **Termination** under Paragraph 7 shall be without prejudice to any claims, obligations, or liabilities either party may have incurred prior to such termination.

8. **Failure to Comply:** If a party fails to comply with any of the requirements or conditions of this Contract, the other may, without incurring liability, refuse to perform further pursuant to this Contract. DLCD shall make no further reimbursement to Grantee and Grantee shall upon demand by DLCD promptly repay DLCD all unexpended grant funds and grant funds expended in breach of this Contract.
9. **Accounting and Fiscal Records:** Using standard accepted accounting and fiscal records, the Grantee shall maintain records of the receipt and expenditure of all funds subject to this Contract for a period of six (6) years after the Closing Date, or for such longer period as may be required by applicable law or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Accounting records related to this Contract will be separately maintained from other accounting records.
10. **Closeout report:** The Grantee shall submit a closeout report to DLCD within thirty (30) days after termination of the grant or the Closing Date of this Contract whichever is earlier.
11. **Closeout Payment:** Reimbursement up to the total amount of remaining grant funds will be made upon submittal of all required Product(s) or Work Product(s), up to and including those required for the final reimbursement, and a signed DLCD closeout form acceptable to DLCD. DLCD shall authorize payment to the Grantee within ninety (90) days of such submittal for all required Product(s) or Work Product(s) or Work Task(s) that are accepted by the DLCD Grant Manager after review for compliance with the Contract.
12. **Closeout Penalty:** DLCD reserves the right to reduce or withhold final payment if a closeout report is submitted to DLCD after the thirty (30) days, as referenced in Standard Condition Number 10.
13. **Subsequent funding:** Eligibility for subsequent funding to the Grantee is contingent upon receipt of the closeout report as referenced in Standard Condition Number 10.
14. **Audit:** The Oregon Secretary of State, Attorney General of the State of Oregon and the Director of DLCD or any other duly authorized representative of DLCD shall have access to and the right to examine any records of transactions related to this Contract for six (6) years after the final reimbursement under this Contract is authorized by DLCD.
15. **Appropriate use of funds:** Grant funds cannot be used for any purpose other than for the Project and Product(s) or Work Product(s) or Work Task(s) done in accordance with the Work Program and Timeline described in the Scope of Work.
16. **Amendments:** Amendments must be facilitated by the DLCD Grant Manager. An amendment to this Contract may be initiated at any time during the grant period, but must be received at the DLCD Salem Office at least ninety (90) days prior to the Closing Date and be signed by all parties on or before sixty (60) days prior to the Closing Date.