

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 29674
Springwater Trail Gap: SE Umatilla to SE 13th Ave
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 the CITY OF PORTLAND, acting by and through its elected officials, hereinafter referred to as "City," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Local Agency Certification Program Agreement No. 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 that are off the National Highway System.
2. SE Umatilla Street and SE 13th Avenue are a part of the City's street system under the jurisdiction and control of City.
3. The Springwater Corridor Trail is designated as an Oregon State Recreational Trail in the State Comprehensive Outdoor Recreation Plan.

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

TERMS OF AGREEMENT

1. Under such authority, City agrees to construct approximately one half mile of multiuse trail along an existing Oregon Pacific Railroad corridor, extending sections of the Springwater Trail (ending at SE Umatilla) to SE 13th Avenue, hereinafter referred to as "Project." The Project will include construction of crosswalks, sidewalk, stormwater management, landscaping, fencing and relocation of the utility line/poles/facilities. The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A" and by this reference made a part hereof.
2. City shall, design (bridge design excluded), advertise, bid, award the construction contract, and perform construction administration. City agrees to comply with all of the terms and conditions found in Certification Program Agreement No. 26586.
3. The total estimated cost of the Project is \$1,278,580, which is subject to change.

4. The Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The CMAQ funds for this Project shall be limited to \$1,147,270. The Project will be financed with CMAQ 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.
5. City shall have a current Indirect Cost Allocation Plan and an approved indirect rate from its federal cognizant agency prior to invoicing indirect costs. A copy of the current approved rate from the federal cognizant agency or State must be attached to invoices with indirect costs. If City does not have a current approved rate, it can apply directly to its federal cognizant agency for an Indirect Cost Rate. If the City has no federal cognizant agency, it can submit an indirect Cost Rate proposal to State for review and approval for State invoices. Without an approved Indirect Cost Rate State will only pay City for Direct Costs.
6. City shall make all payments for work performed on the Project, including all construction costs, and invoice State for 100 percent of City's 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 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. 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.
7. The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at City expense. State's Regional Local Agency Liaison or designee will provide City with a written notice to proceed when FHWA approval has been secured and funds are available for expenditure on this Project.
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 ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
10. 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.

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11. 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.
12. 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.
13. State may conduct periodic inspections during the life of City Certification Projects to verify that Projects are being properly maintained and continue to serve the purpose for which federal funds were provided.
14. This Agreement may be terminated by mutual written consent of both Parties.
15. 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.
16. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
17. 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.

18. 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.
19. 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.
20. State's Project Liaison for the Agreement is Reem Khaki, 123 NW Flanders Street, Portland, OR 97209, (503) 731-8501, Reem.D.Khaki@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.
21. City's Project Liaison for this Agreement is George Lozovoy, Portland Parks & Recreation, 1120 SW 5th Ave., Suite 1302, Portland, OR 97204, (503) 823-5595, george.lozovoy@portlandoregon.gov, or assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

THE PARTIES, by execution of this Agreement, hereby acknowledge 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 #18416) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

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CITY OF PORTLAND, acting by and
through its elected officials

By _____
Commissioner-in-Charge

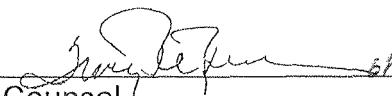
Date _____

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

By _____
Highway Division Administrator

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By  _____
City Legal Counsel
CITY ATTORNEY

Date 5/28/14

APPROVAL RECOMMENDED

By _____
Certification Program Manager

Date _____

By _____
Region 1 Manager

Date _____

By _____
Region 1 Project Services Manager

Date _____

City Contact:

George Lozovoy, Project Manager
Portland Parks & Recreation
1120 SW 5th Ave., Suite 1302
Portland, OR 97204
(503) 823-5595
george.lozovoy@portlandoregon.gov

State Contact:

Reem Khaki, Local Agency Liaison
123 NW Flanders Street
Portland, OR 97209
(503) 731-8501
Reem.D.Khaki@odot.state.or.us

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

Exhibit A – Project Location Map

