

Misc. Contracts and Agreements
No. 28,038

AMENDMENT NUMBER 02
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 28038
Red Electric Trail: SW Bertha to SW Vermont Section
City of Portland

This is Amendment No. 02 to the Agreement 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," entered into an Agreement on November 8, 2011, and Amendment Number 01 on October 22, 2013. Said Agreement covers pedestrian and cyclist on-street and off-street trail connections.

It has now been determined by State and City that the Agreement referenced above shall be amended to change the project name, add new definitions, and update project scope and schedule. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.

2. **Amendment to Agreement.**

The Agreement title has been revised to read "Red Electric Trail: SW Bertha to SW Vermont Section" to reflect the current Project limits for the purpose of this Agreement.

Exhibit A shall be deleted in its entirety and replaced with the attached Revised Exhibit A. All references to "Exhibit A" shall hereinafter be referred to as "Revised Exhibit A."

Exhibit B shall be attached hereto, marked "Exhibit B," and by this reference made a part hereof.

RECITALS, Paragraph 2, Page 1, which reads:

2. Red Electric Trail, SW 30th and SW Vermont are a part of the City's street system under the jurisdiction and control of City.

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

2. SW Bertha Boulevard, SW Capitol Highway, SW Nebraska Street, SW 19th Avenue, and SW Vermont Street are a part of the City's street system under the jurisdiction and control of City. The Red Electric Trail corridor is a part of the street system and Metro Regional Trails system under the jurisdiction and control of City.

Insert new DEFINITIONS, Paragraphs 1 through 8, to read as follows:

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1. "Contract Award" (construction projects) means the issuance of a Notice to Proceed (NTP) to the construction contractor.
2. "Contract Award" (non-construction projects) means upon completion of final plans and reports.
3. "Contract Time" means amount of time for completing the bid item work under the contract.
4. "Final Acceptance" means written confirmation by Agency and State that the project has been completed according to the contract, with the exception of any latent defects and warranty obligations, if any, and has been accepted.
5. "Obligation" means approval of funding that allows a project to commence with spending.
6. "Project Completion" (non-construction projects) means the project is 100 percent complete per project description in Exhibit B.
7. "Project Completion" (construction projects) means Final Acceptance of the project, Final Payment to the contractor has been made and project documentation is completed per the ODOT Construction Manual.
8. "Project Close-Out" means project is ready to close as there are no more expenditures associated with project.

TERMS OF AGREEMENT, Paragraph 1, Page 1, which reads:

1. Under such authority, City agrees to provide pedestrian and cyclist on-street and off-street trail connection on the segment of the Red Electric Trail from SW 30th Avenue to SW Vermont Street, hereinafter referred to as "Project". The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A" and by this reference made a part hereof.

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

1. Under such authority, City agrees to provide pedestrian and cyclist on-street and off-street trail connections from Bertha Boulevard near its intersection Beaverton-Hillsdale Highway to SW Vermont Street, at or near its intersection with SW Bertha Boulevard, hereinafter referred to as "Project". The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A" and by this reference made a part hereof. The Project scope and 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.

TERMS OF AGREEMENT, Paragraph 2, Page 1, which reads:

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2. The total estimated cost of the Project is \$2,200,000, 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 \$2,887,000, which is subject to change.

TERMS OF AGREEMENT, Paragraph 3, shall be deleted in its entirety and shall be identified as RESERVED.

TERMS OF AGREEMENT, Paragraph 4, Page 2, which reads:

4. This 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 are limited to \$1,748,838, with Agency providing the match and non-participating costs, including all costs in excess of the available federal funds. Agency shall be responsible for determining the amount of federal funds to be applied to each phase of the Project. Agency is not guaranteed the use of unspent funds for a particular phase of work. It is Agency's responsibility to notify State in advance of State obligating the funds for a subsequent phase if Agency wants to release funds on the current authorized phase(s) of work.

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

4. This Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code and the Surface Transportation Program (STP) also under Title 23, United States Code. The CMAQ funds are limited to \$1,748,823, with City providing the match and non-participating costs, including all costs in excess of the available federal funds. The STP Urban funds are limited to \$180,360 with City providing the match. City shall be responsible for determining the amount of federal funds to be applied to each phase of the Project. City is not guaranteed the use of unspent funds for a particular phase of work. City must notify State and obtain concurrence in advance of State obligating the funds for any phase of the Project if City wants State to release funds on the current authorized phase(s) of work and reprogram those funds for use in a later phase of work.

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

5. 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. State shall simultaneously invoice FHWA and City for State's

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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 3, 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.

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

5. 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 \$28,000. 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 3, 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.

TERMS OF AGREEMENT, Paragraph 20, Page 4, which reads:

20. State's Project Liaison for the 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.

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

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.

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.

3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

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4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Recipient certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

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 #17268) 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, by and through
its elected officials

By _____
Commissioner-in-Charge

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
City Attorney

Date _____
CITY ATTORNEY
7/10/15

City Contact:

Elizabeth Mahon- PBOT
1120 SW 5th Avenue, Room 800
Portland, OR 97204
503-823-0396
elizabeth.mahon@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

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date _____
Active Transportation Section Manager

By _____
CMAQ Program Manager

Date _____

By _____
Region 1 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____ Approved via email
Assistant Attorney General

Date _____ 3-3-2015

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REVISED EXHIBIT A - Project Location Map



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EXHIBIT B
Project Cost Estimate, Progress Reports and Project Change Request Process
Agreement No. 28038
Key Number: 17268
Project Name: Red Electric Trail: SW Bertha to SW Vermont Section

1. Project Description

The City will provide pedestrian and cyclist on-street and off-street trail connections from Bertha Boulevard near its intersection Beaverton-Hillsdale Highway to SW Vermont Street, at or near its intersection with SW Bertha Boulevard. This Project will involve design and construction of two main trail segments.

Segment A - will be an off-street trail from an existing crossing of SW Capitol Highway to the north and west, where it will intersect with SW Bertha Boulevard near an existing intersection SW Beaverton-Hillsdale Highway. There are no existing facilities. This segment will require a structure in the middle to cross a ravine in the public right of way.

Segment B - is an existing on-street trail along SW Nebraska and SW 19th between SW Capitol Highway and SW Vermont. This segment has an improved roadway with sections of curb and six feet (6') wide sidewalks along SW Nebraska Street, SW 19th Avenue, and SW Idaho Street. The minimum proposed treatment will be to sign and stripe the bicycle and pedestrian routes along these existing streets. The preferred treatment (if funding allows) would be sidewalk infill where needed between SW Vermont and SW Nebraska Streets in addition to pedestrian and bikeway signage and striping improvements.

2. This Project is subject to progress reporting and project change process as stated below.
3. **Monthly Progress Reports (MPR)** - Agency shall submit monthly progress reports using MPR Form 734-2862, incorporated 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 Project completion.

The fillable MPR form and instructions are available at the following address:
http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

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.

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Table 1: Project Milestones

| | Milestone Description | Completion Date |
|---|--|------------------------|
| 1 | Obligation (Federal Authorization) of Federal funds for the Preliminary Engineering phase of Project | 9/2/2011 |
| 2 | Obligation (Federal Authorization) of Federal Funds for the Right of Way phase of the Project | 1/30/2016 |
| 3 | Obligation (Federal Authorization) of Federal for the Construction phase of Project | 9/30/2016 |
| 4 | Project Completion (non-construction projects) | 12/30/2017 |

5. **Project Change Request (PCR) Process** - Agency must obtain approval from State's Contact for changes to the Project's scope, schedule, or budget as specified in paragraphs 6a, 6b and 6c, below. Agency shall be fully responsible for all costs that occur outside 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 Agency 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).
 - c. **Budget** - Total Project Cost and approved funds for the Project are controlled by Terms of Agreement paragraph 2 of this Agreement.
6. **PCR Form** - Agency 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 Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion State's CMAQ Program Manager.

The fillable PCR form and its instructions are available at the following web site:
http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

7. **Consequence for Non-Performance** - If Agency fails to fulfill its obligations in paragraphs No. 3 through No. 7 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones,

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State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's managed funding programs, (b) withdrawing unused Project funds, and (c) terminating this Agreement as stated in Terms of Agreement, Paragraph No. 15a and 15b.