

**INTERGOVERNMENTAL AGREEMENT**  
**Southwest In Motion (SWIM)**  
**CITY OF PORTLAND**

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Oregon Department of Transportation (ODOT), hereinafter referred to as "State," and **City of Portland**, acting by and through its elected officials, hereinafter referred to as "Agency" together referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110 and 283.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Agency desires to enter into this Agreement in order to develop a project for the Metropolitan Transportation Improvement Program (MTIP). The MTIP schedules spending of federal transportation funds in coordination with significant state and local funds in the Portland Metro region. It demonstrates how these projects relate to federal regulations regarding project eligibility, air quality impacts, environment justice and public involvement.
3. State, as the state agency responsible for pass-through Federal-Aid Surface Transportation Funds, is therefore a Party to this Agreement.
4. State and the Portland Urbanized Area Metropolitan Planning Organization (METRO), have entered into Intergovernmental Agreement Number 26835, State Fiscal Year 2011 Unified Planning Work Program (UPWP), and Intergovernmental Agreement Number 24862, State/MPO/Transit Operator Agreement, wherein State and METRO have responsibilities to carry out the metropolitan transportation planning process.
5. The project that is subject of this Agreement is listed in the UPWP, as well as Metro and State's respective roles and responsibilities. METRO is not a Party to this Agreement due to the existence of Agreement Number 24862 and the UPWP, and any METRO responsibilities mentioned in this Agreement are based on its obligations in these two (2) agreements.

**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 the Parties agree to develop a project for the Metropolitan Transportation Improvement Program (MTIP). Project planning and development

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phase **Southwest in Motion (SWIM)**. The purpose of this Agreement is to enable Agency, through METRO, to create a Planning Process Document that identifies a five (5) year Active Transportation Implementation Strategy for all of Southwest Portland, hereinafter referred to as "Project," and as described in the Statement of Work, Exhibit A (scope, schedule and budget summary), attached hereto and by this reference made a part hereof.

2. The following documents are attached hereto and by this reference made a part of this Agreement:
  - a. Exhibit A – Scope of Work
  - b. Exhibit B – Contractor Certification
  - c. Exhibit C – Federal Provisions
3. A personal services contractor, hereinafter referred to as "Consultant," has been selected by Agency, pursuant to the process established by ORS 279C.125 and Oregon Administrative Rule (OAR) 137-048-0260, to perform the Project. The Parties agree that State will enter into a personal services contract directly with consultant and Agency will manage and direct the consultant's work in accordance with this Agreement.
4. The Project shall be conducted as a part of the Federal-Aid Urban Surface Transportation Program (STP), Title 23, and United States Code CFDA No. 20.205. The total Project cost is estimated to be \$303,132, which is subject to change. Federal Urban STP funds for this Project shall be limited to \$272,000 in federal funds. Agency shall be responsible for the matching funds and any non-participating costs, including all costs in excess of the available federal funds.
5. Agency shall invoice State for expenditures made for Project 100%. State shall reimburse Agency invoices at the pro-rated federal share. All costs beyond the federal reimbursement and any non-participating costs will be the responsibility of the Agency. Agency agrees to the federal reimbursement to State for the reimbursement of Agency's matching portion of the actual amount expended.
6. The term of this Agreement shall begin on the date all required signatures are obtained and Federal Highway Administration (FHWA) approval has been given and shall terminate upon completion of the Project and final payment or two (2) calendar years following the date of the Notice to Proceed (NTP), whichever is sooner. This Agreement may be amended only upon mutual written consent of all Parties. No work shall begin on the Project until Agency receives written notice to proceed from State regarding federal approval for the use of federal funds.
7. The federal funding for this Project is contingent upon approval by FHWA. Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency's expense.

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8. State considers Agency a sub-recipient 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.

#### **AGENCY OBLIGATIONS**

1. Agency shall be responsible for the performance of the work described in Exhibit A.
2. Agency has confirmed with METRO that sufficient funds from METRO's STP Urban allocation are available and authorized for expenditure to pay the costs of the Project. Agency certifies that sufficient funds are available and authorized to pay the required match to the STP Urban allocation. Agency is responsible for the required match funds and any non-participating costs beyond the federal reimbursement.
3. Pursuant to the contract to be entered into between State and Consultant, Agency shall submit invoices and required supportive documentation regarding specific tasks and the progress on said tasks as shown in Exhibit A (i.e. monthly progress statement), for 100 percent of actual eligible costs incurred by Consultant on behalf of the Project directly to Metro's Project Manager for review and approval. Agency will also submit its own invoices and required supportive documentation regarding specific tasks and the progress on said tasks as shown in Exhibit A for 100 percent of actual eligible costs incurred by Agency on behalf of the Project directly to METRO's Project Manager for review and approval.
4. Information required by 2 CFR 200.331(a), except for (xiii) Indirect cost rate, shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by State to Agency with the Notice to Proceed.

The indirect cost rate for this project at the time the agreement is written is 79.27% and may change upon notice to State and State's subsequent written approval. Agency may have other indirect cost rates for departments and or disciplines that have been approved for use by their cognizant agency and ODOT and these rates may be used on the Project, as applicable.

5. METRO's contact for this Project is Chris Ford, METRO, 600 NE Grand Avenue, Portland, OR97232, 503-797-1633, Chris.Ford@oregonmetro.gov.
6. METRO, pursuant to Agreement Number 24662 and Agreement Number 26835 with State, will review and approve such invoices and thereafter present invoices and supportive documentation directly to State's Project Manager for review, approval, and payment. Invoices and required supportive documentation shall be presented for periods of not less than one-month duration, based on actual eligible expenses incurred. Invoices shall display 100 percent of total eligible expenses incurred during the period of the invoice, and identify any matching amounts if applicable. Invoices shall also display a categorical breakdown of costs, such as personnel costs (salary and benefits), other direct charges, and indirect charges that are appropriate for this



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Project. Documentation must be received by METRO before payment will be made, and must include copies of receipts for expenditures or system-generated accounting reports that document actual expenses incurred. Travel expenses shall be reimbursed to Agency in accordance with the current State of Oregon Department of Administrative Services' rates. Agency shall be responsible for all matching funds and all non-participating costs.

- a. Eligible project expenses are those deemed allowable by the Office of Management and Budget (OMB) Circular A-87.
  - b. In the event the invoice is not approved, State shall request corrective action be taken and accomplished prior to approval of the invoice. The invoice shall be resubmitted with documentation supporting completion of the corrective action.
7. Agency shall keep accurate cost accounting records. The cost records and accounts pertaining to the work covered by this Agreement shall retained by Agency for a period of six (6) years following final payment. Copies shall be made available upon request to State. State may request a copy of Agency's records pertaining to this Project at any time. When the actual total cost of the Project has been computed, Agency shall furnish State with an itemized statement of final costs.
8. If Agency determines that another personal services contractor(s) along with Consultant is necessary to accomplish any work described in Exhibit A, then Agency and State shall follow a similar process as described in Terms of Agreement, Paragraph 3, of this Agreement to select the contractor.
9. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising for a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ('Claims'). It is the specific intention of the Parties that the State shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
10. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
11. Agency, shall coordinate the work with State planning staff to address the following current/future plans and projects:
  - a. SW Corridor "early opportunity" safety and access to transit projects that State has completed on SW Barbur Boulevard over the last two (2) years.



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- b. TriMet STIP Enhance project that will construct additional active transportation projects along OR99W (estimated bid/construction is 2016/2017): Key # 19345
  - c. ODOT Region 1 Active Transportation Needs Inventory (ATNI)
  - d. MCA029904 and MCA029904-01
  - e. SW Corridor Plan for high capacity transit, including related pedestrian, bicycle, and roadway improvements
12. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Agency, be indemnified by the contractor and subcontractor from and against any and all Claims.
13. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any 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 the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
14. Agency agree to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, which hereby are incorporated by reference. Without limiting the generality of the foregoing, METRO and Agency expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

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15. Agency shall perform the service under this Agreement as independent contractors and shall be exclusively responsible for all costs and expenses related to their employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
16. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
17. Agency acknowledge and agree that Agency, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
18. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
19. Agency's Project Manager for this Project is **Rich Newlands, Project Manager, Portland Bureau of Transportation, 1120 SW 5<sup>th</sup> Ave, Suite 800, Portland, OR 97204, 503-823-7780, rich.newlands@portlandoregon.gov**, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## STATE OBLIGATIONS

1. State shall be responsible for obtaining FHWA approval to obligate the STP Urban funds for this Project.
2. Upon approval by FHWA, State shall send a Notice to Proceed (NTP) to the Agency. This is the written notification indicating federal approval for the use of the federal funds.
3. State shall be responsible for the performance of the work described in Exhibit A.
4. In consideration for the services performed, and upon receipt of monthly Agency reimbursement requests, along with invoices and supporting documentation approved by METRO for services performed by Agency, State shall review for approval and where appropriate make payment to Agency for eligible costs. Said payment shall be

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within forty-five (45) days of receipt by State of the Project invoices and shall not exceed a maximum amount of **\$272,000**. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to Agency in accordance with the current State of Oregon Department of Administrative Services' rates.

5. State has no monetary obligation under this Agreement other than in its role as "pass-through agency" to distribute Urban STP funds for the Project outlined in Exhibit A.
6. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of the current biennial budget.
7. State's Project Manager for this Project is Reem Khaki, Local Agency Liaison, ODOT Region 1, 123 NW Flanders St, Portland, OR 97221, 503-731-8501, [reem.d.khaki@odot.state.or.us](mailto:reem.d.khaki@odot.state.or.us), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of all Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement and as further outlined in Exhibit A within the time specified herein or any extension thereof.
  - b. If Agency 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 Agency fails to correct such failures within ten (10) days or such longer period as Agency may authorize.
  - c. If Agency 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 State is prohibited from paying for such work from the planned funding source.



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3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. As federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made as part of this Agreement, and are hereby certified to by Agency representative. Agency also certifies to any provisions of Exhibit B and C which are applicable to its situation as a sub-sub recipient of federal funds.
5. Agency as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for their organization's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires State to return funds to the Federal Highway Administration, 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 Agency, 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.
6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
7. With respect to a Third Party Claim for which State is jointly liable with Agency(or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of the Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if Agency had sole liability in the proceeding.

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8. With respect to a Third Party Claim for which Agency is jointly liable with the State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. 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.
11. This Agreement and attached exhibits constitute 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.

**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 #K19301) 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 \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Counsel

Date \_\_\_\_\_  
CITY ATTORNEY 2/3/16

**Agency Contact:**

Rich Newlands, Project Manager  
Portland Bureau of Transportation  
1120 SW 5th Ave., Suite 800  
Portland, OR 97204-1971  
(503) 823-7780  
[rich.newlands@portlandoregon.gov](mailto:rich.newlands@portlandoregon.gov)

**State Contact:**

Reem Khaki  
Local Agency Liaison  
Oregon Department of Transportation  
Region 1  
123 NW Flanders St.  
Portland, OR 97221  
Phone# (503) 731-8501  
[reem.d.khaki@odot.state.or.us](mailto:reem.d.khaki@odot.state.or.us)

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

By \_\_\_\_\_

Region 1 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Region 1 Planning Manager.

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date 1/21/2016



**EXHIBIT A**  
**Southwest in Motion (SWIM)**  
**City of Portland**

**Scope of Work**

**Project Planning and Development Phase**

**Project Background**

Southwest Portland is a low to medium density residential area, distinguished from the neighborhoods of Portland's eastside primarily by its hilly topography and resulting lack of a traditional grid street network. The topography has also constrained the design of streets, many of which have been developed without sidewalks or stormwater drainage. Strategic infill of active transportation infrastructure is needed to allow the district to meet the Agency's policy goals for active transportation use. Safety improvements for these modes are also supportive of Agency's recently adopted Vision Zero initiative. This project supports safety, equity and access goals identified in Portland's Comprehensive Plan, the Portland Bicycle Plan for 2030 and Agency's recently adopted Vision Zero initiative.

**Project Overview**

The purpose of the Project is to engage the community with innovative and targeted outreach and involvement techniques to develop an action plan that will promote high levels of healthy active transportation by Southwest Portland residents. The implementation plan will identify bicycle and pedestrian network needs, develop criteria to evaluate and identify priorities for active transportation projects over a five year timeframe and develop education activities tied directly to the new infrastructure projects to promote their use.

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### **Statement of Work**

#### **Task 1: Project Management**

Agency shall identify a staff member that will be responsible for providing overall project management and direction throughout the process. The Project Manager (PM) will be responsible for final approval of all work tasks and deliverables identified in this SOW.

##### **Deliverables:**

1. Agency shall produce detailed public involvement plan and schedule.
2. Agency shall produce monthly progress reports that reflect the project schedule and show the budgeted cost for each task, tasks completed/percent complete, actual cost/cost to date, billable hours per person per task, and cost of materials.

#### **Task 2: Stakeholder Involvement**

Agency shall solicit and form a Stakeholder Working Group (SWG) that can provide feedback on the major work products and help prioritize projects to be constructed with grant funding. The SWG will be composed of representatives from the neighborhood and business associations with the project area, the district coalition (SWNI), the Portland Bicycle and Pedestrian Advisory Committees, and other appropriate civic organizations. The committee will be limited to twenty (20) members. The structure will also provide for input from affected users and agencies such as Tri-Met and the State. Provide adequate opportunity for stakeholder participation and input throughout the project duration and respond to stakeholder values and issues through a series (4 to 6) meetings.

##### **Deliverables:**

1. Agency shall form the Stakeholder Working Group (SWG) membership and meeting schedule.

#### **Task 3: Existing Conditions Inventory**

Agency shall prepare an analysis of existing conditions for pedestrian, bicycles and transit access for the entire project area.

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1. The analysis will include a qualitative and quantitative evaluation of existing conditions.
2. Include inventory of existing planning and policy documents related to active transportation needs in the project area, as defined in Portland's Transportation System Plan as the Southwest District.
3. Identify potential funding sources for capital improvement projects.
4. Identify existing education program opportunities that can be coordinated with capital project implementation to promote their use.

**Deliverables:**

1. Agency shall provide maps and other diagrams presenting qualitative and quantitative existing conditions by mode.
2. Agency shall create and provide memos summarizing results of analysis for both existing conditions and prior planning efforts and policies relevant to project selection and design.

**Task 4: Public Outreach**

Agency shall conduct public meetings, innovative and targeted outreach and involvement techniques, presentations and other venues educate the public and stakeholders on the benefits of improved access and safety for bicycles and pedestrians. Agency shall solicit input from the public on popular routes, perceived barriers and desired improvements. The campaign will include mailings to businesses, direct contacts and at least two (2) intense design/planning type events.

**Deliverables:**

1. Agency shall provide a document outlining the public outreach strategy.
2. Agency shall provide a summary of outreach event outcomes.
3. Agency shall provide a summary of input from open houses and other public communications.
4. Agency shall provide a document which includes an inventory of new project concepts identified through public involvement.



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#### **Task 5: Develop Active Transportation Project List**

Agency shall develop a list of candidate projects for evaluation and prioritization based on existing known projects identified through previous planning efforts and new projects developed through analysis of existing conditions and public involvement. Agency shall provide a project list, which will include basic project description, preliminary/ planning level cost estimate, and identification of potential design feasibility issues.

##### **Deliverables:**

1. Agency shall draft the active transportation project list and provide it to State.

#### **Task 6: Project Prioritization**

Agency shall develop objective, matrix-based evaluation criteria in conjunction with the SWG to prioritize the candidate project list. An important component of the evaluation criteria will be cost feasibility analysis of the identified capital improvements based on bicycle, pedestrian and transit needs and potential tradeoffs. Apply criteria to Task 5 Project List to develop draft prioritized project list.

##### **Deliverables:**

1. Agency shall determine project prioritization evaluation criteria.
2. Agency shall draft the action plan that includes a prioritized project list.

#### **Estimated Project Budget**

	<b>Task</b>	<b>Amount</b>
<b>1</b>	<b>Project Management</b>	<b>\$130,000</b>
<b>2</b>	<b>Stakeholder Involvement</b>	<b>\$20,000</b>
<b>3</b>	<b>Existing Conditions Analysis</b>	<b>\$50,000</b>
<b>4</b>	<b>Outreach</b>	<b>\$50,000</b>
<b>5</b>	<b>Draft Project List</b>	<b>\$25,000</b>
<b>6</b>	<b>Evaluate/Prioritize Project List</b>	<b>\$25,000</b>
	<b>TOTAL</b>	<b>\$300,000</b>

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**Entities Responsible for Activity:**

The City of Portland will be the lead agency for this project. The technical work will either be performed by a consultant or City of Portland staff.

**Lead agencies/partners:**

Portland Bureau of Transportation - Lead Agency/Project Manager  
Metro - Partner agency  
Oregon Department of Transportation - Partner agency  
TriMet – Partner agency  
Multnomah County – Partner Agency

**Other stakeholders:**

Portland Bicycle Advisory Committee  
Portland Pedestrian Advisory Committee  
SW Neighborhoods Inc.- Neighborhood Association

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For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency and references to Contract shall mean Agreement.

### **EXHIBIT B CONTRACTOR CERTIFICATION**

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

### **DEPARTMENT OFFICIAL CERTIFICATION**

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

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### **EXHIBIT C**



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Federal Provisions  
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND  
SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it  
and its principals:

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1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

#### EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

#### II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.

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3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system

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of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

### III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

#### **Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this Contract, the prospective lower

tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for



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assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not

required to, check the nonprocurement list.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible

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or voluntarily excluded from participation in this transaction by any Federal department or agency.

- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

#### IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or

have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.

3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

#### V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract.

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Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.

3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:

- a. Contractor will not discriminate against any employee or applicant for

employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or



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FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.

5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or

- b. Cancellation, termination or suspension of the agreement in whole or in part.

6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect

the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

#### VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

##### **DBE POLICY STATEMENT**

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

##### **Required Statement For USDOT Financial Assistance Agreement.**

If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26



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have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to

replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

#### **DBE Definition.**

#### **CONTRACTOR'S DBE CONTRACT GOAL**

**DBE GOAL** 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

#### **VII. LOBBYING**

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making

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of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING  
DEPARTMENT'S DBE  
PROGRAM REQUIREMENT  
CONTACT OFFICE OF CIVIL  
RIGHTS AT (503)986-4354.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such