

Misc. Contracts and Agreements No. 31182
Cross Ref. Master Certification Agreement No. 30890

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
SURFACE TRANSPORTATION PROGRAM - URBAN
Supplemental Project Agreement No. 31182
Foster Road Streetscape: SE 50th - SE 92nd**

187853

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. 30890 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.
2. Foster Road is a part of the City's street system under the jurisdiction and control of City.
3. SE Powell Boulevard (Mount Hood Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).

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, State and City agree to City constructing: pedestrian, bicycle and transit access improvements along SE Foster Road, from SE Powell Boulevard to SE 92nd Ave, hereinafter referred to as "Project." Improvements include new median islands with flashing beacons, marked crosswalks, signage, advanced stop bar and signage at existing marked crosswalks and new marked crosswalk, curb extensions at non-signalized marked crosswalks, ADA ramps, additional street trees, street lighting, bike parking, and bus stop improvements. The Project will reallocate the curb to curb space to provide space for new bike lanes and sidewalk widening in the eastern portion of the Project area. The new bicycle facilities require reducing the number of travel lanes from four to three. 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. The total estimated cost of the Project is \$4,471,000, which is subject to change.
3. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program (STP) - under Title 23, United States Code. State STP Urban (STP-U)

funds for this Project shall be estimated at \$3,313,402. The Project will be financed with STP-U funds at the maximum allowable federal participating amount, which is 89.73 percent, with City providing the 10.27 percent match for eligible costs, which is \$379,235 and paying for any non-participating costs and all costs in excess of the available federal funds. City acknowledges that it is also contributing an additional \$778,365 over its match requirement.

4. City shall make all payments for work performed on the Project, including all construction costs, and invoice State for one-hundred (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 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.
5. If State performs work throughout the duration of the Project, State will provide a preliminary estimate of State costs for said work to City. Prior to the start of each Project phase State will provide an updated estimate of State costs from that phase to City. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction. City understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per the Terms of this Agreement.
6. City shall design, 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. 30890.
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. 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 ODOT to City with the Notice to Proceed.
 - a. The indirect cost rate for this project at the time the agreement is written is 79.27 percent and may change upon notice to State and ODOT's subsequent written approval. City may have other indirect cost rates for departments and or disciplines that have been approved for use by their cognizant City and ODOT and these rates may be used on the Project, as applicable.

10. City shall contact the State's District 2B Office prior to commencement of work to determine if any permits are needed to occupy State right-of-way. City agrees to comply with all provisions of any State issued permits to "Occupy or Perform Operations Upon a State Highway" and to also obtain Highway Approach Permits from State's District 2B Office for all public roads and private properties adjacent to the highway, if they are needed, according to Oregon Administrative Rule (OAR) 734, Division 51. City agrees to comply with all provisions of required permits, and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such provisions.
11. 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.
12. Local Agency Certification Program Agreement No.30890 was fully executed on September 15, 2015. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
13. 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.
14. Pursuant to OAR 734-020-0430, City shall obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a State Highway.
15. City or its contractor's electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on State highways. The State District Permitting Office shall verify compliance with this requirement prior to construction. The permit fee should also cover the State electrician's supplemental inspection.
16. State's Region Electrical Crew shall, at Project expense, perform the signal equipment environmental testing for any signal work performed on a State Highway. In the event that new vehicle detector loops are installed on SE Powell Boulevard in connection with the new pedestrian active warning sign(s), City shall, upon completion of the Project and at its own expense, maintain the vehicle detector loops in accordance with State standards. City shall own and maintain said pedestrian active warning sign(s).
17. State shall, upon completion of the Project and at its own expense, maintain the pavement surrounding the above mentioned vehicle detector loops installed in the State highway in such a manner as to provide adequate protection for said detector loops.
18. If City enters into a construction contract for performance of work on the Project where City is contracting work on a State highway, then City will require its contractor to provide the following:

- a. Contractor shall indemnify, defend and hold harmless City, State and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under this the resulting contract.
- b. Contractor City shall name State as a third party beneficiary of the resulting contract.
- c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State and City. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$ 2,000,000.
- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.
- e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the Contract shall include State and City and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under the resulting contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State and City. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of the resulting contract and shall be grounds for immediate termination of the resulting contract and this Agreement.
- g. City shall require its contractor(s) and/or subcontractor(s) as appropriate to acquire construction and performance bonding covering State's interests where Project construction affects State Property. State will be covered individually under the bonding arrangement, not as a party in a dual obligation bond. Proof of said bonding will be provided to State by the acquiring party. If City fails to meet the requirements of this paragraph or the underlying agreement conditions, including all incorporated State and federal laws, rules and regulations and costs

are incurred by State because of it, State may withhold the City's proportional share of Highway Fund distribution necessary to reimburse State for those costs.

- h. Traffic signal, illumination poles and foundations installed on state highways shall conform to State's standards, pursuant to State's Traffic Structures Design Manual and Geotechnical Design Manual.
- 19. City shall be responsible for any behind the curb improvements including areas located within highway right-of-way. Such improvements shall be maintained at the same level as are similar facilities owned by State. City may require the adjacent property owners to fund or perform maintenance of the behind the curb improvements. City shall remain responsible for compliance with the terms of this Agreement, and responsible for the performance of such work, even when maintenance is performed by City contractors or property owners, or if right of way behind the curb is partly or in whole State right of way.
- 20. If applicable, State hereby grants the City or others designated by the City and permitted by State District Permitting Office, permission to access State right of way for the purpose of maintaining Project related landscaping, sidewalks, and vehicle detector loops, if any. In lieu of State district permits, State hereby grants City or others designated by City the right to enter and occupy State right of way for the purpose of routine maintenance of all project improvements. All other activities beyond the listed routine maintenance may require a State District Office issued permits prior to said activities. Contact appropriate State's District Office to see if a permit is required.
- 21. State may conduct periodic inspections during the life of the Project to verify that the Project is being properly maintained and continue to serve the purpose for which federal funds were provided.
- 22. This Agreement may be terminated by mutual written consent of both Parties.
- 23. 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.

- 24. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 25. 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.
- 26. 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.
- 27. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 30890, 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.
- 28. State's Project Liaison for the Agreement is Justin Bernt, Region 1 Local Agency Liaison, 123 NW Flanders St., Portland, OR 97209, Phone 503-731-3016, justin.j.bernt@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.
- 29. City's Project Liaison for this Agreement is Rich Newlands, Project Manager, 1120 SW Fifth Ave, Suite 800, Portland, OR 97204, Phone 503-823-7780, rich.newlands@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 2015-2018 Statewide Transportation Improvement Program, (Key #18022) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

CITY OF PORTLAND, acting by and
through its elected officials

By _____

Title _____

Date _____

By _____

Title _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

City Legal Counsel

Date _____

City Contact:

Rich Newlands, Project Manager
1120 SW Fifth Ave, Suite 800
Portland, OR 97204
Phone: 503-823-7780
Email: rich.newlands@portlandoregon.gov

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

By _____

Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____

Certification Program Manager

Date _____

By _____

Region 1 Manager

Date _____

By _____

Region 1 Project Services Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

Assistant Attorney General

Date _____

State Contact:

Justin Bernt
Region 1 Local Agency Liaison
123 NW Flanders St.,
Portland, OR 97209
Phone: 503-731-3016
Email: justin.j.bernt@odot.state.or.us

Exhibit A – Project Location Map

