

Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 31303
East Portland Access to Employment and Education

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 Bureau of Transportation, acting by and through its elected officials, hereinafter referred to as "City," both herein referred to individually as a "Party" and collectively as the "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. The following streets are a part of City's street system under the jurisdiction and control of City:
 - Those streets from 106th Avenue to 109th Avenue and between NE Klickitat Street and SE Bush Street
 - The corridor of streets including SE 102nd Avenue, SE 103rd Avenue and SE Cherry Blossom Drive between SE Washington Street and SE Market Street
 - SE Market Street between SE 92nd Avenue and SE 130th Avenue
 - Those streets from 151st Avenue to 157th Avenue and between NE Halsey Street and SE Powell Boulevard
3. Portions of SE Powell Boulevard (US 26) and War Veterans Memorial Freeway (Interstate 205) are a part of the State highway system under the jurisdiction and control of the Oregon Transportation Commission.

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. City will design and construct certain improvements in Northeast and Southeast Portland, hereinafter referred to as the "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. Subject to Project constraints and availability of funds, the Project includes, but is not limited to, the following elements:
 - a. Sidewalk and curb ramp infill and new bike lanes;
 - b. Construction of the "100s Neighborhood Greenway Extension";

- c. Construction of the "150s Neighborhood Greenway";
 - d. Improvements to the comfort, access, and safety of existing bus stops.
2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program ("STP") under Title 23, United States Code. The total Project cost is estimated at \$5,869,831, which is subject to change. STP urban funds for this Project will be limited to \$5,267,000. The Project will be financed with STP funds at the maximum allowable federal participating amount, which is 89.73 percent, with City providing the 10.27 percent match for eligible costs and paying for any non-participating costs, including all costs in excess of the available federal funds.
3.
 - a. 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 City with the Notice to Proceed.
 - b. 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. City may have other indirect cost rates for departments and or disciplines that have been approved for use by their cognizant agency and State, and these rates may be used on the Project, as applicable.
4. City shall make all payments for work performed on the Project, including all construction costs, and invoice State for one-hundred percent (100%) 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 the Federal Highways Administration (the "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 2 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. City shall design, advertise, bid, award the construction contract, and perform construction administration.
6. City may issue work for right of way and appraisals for this Project under City's Price Agreement RFP TRN109, dated July 1, 2014, until the Price Agreement's three-year term expires on July 1, 2017, or when the maximum amount of \$800,000 has been used, whichever is sooner.
7. The Parties will comply with the terms set forth in "Milestones and Schedules," attached hereto as Exhibit B and by this reference made a part hereof.
8. The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to FHWA acceptance will be considered nonparticipating and paid for by the City. 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.
9. 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.

10. 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.
11. Local Agency Certification Program Agreement No. 30890 was fully executed on September 18, 2015. This Agreement is subject to the terms and provisions of Local Agency Certification Program Agreement No. 30890.
12. 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. City will be ineligible to receive or apply for any Enhancement Funds until State receives full reimbursement of the costs incurred.
13. 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.
14. City and State shall enter into a separate traffic signal agreement to cover obligations for any traffic signal being installed on a State Highway.
15. City's, or its contractor's, electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on a State Highway. 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. Absent a previous agreement stating otherwise, State's Region Electrical Crew shall, at Project expense, perform the signal equipment environmental testing. If there is another agreement that states which Party is responsible for signal equipment environmental testing, the terms of that agreement shall control with respect to such testing only.
17. Traffic signal timing shall be the responsibility of State, unless there is an agreement that specifically allows City to perform that function. State shall retain the right of review of the traffic signal timing for signals on state highways, or those which State maintains, and shall reserve the right to request adjustments when needed. In cases where the City modifies timing to add railroad or emergency vehicle preemption, bus priority, or other changes that affect vehicle or pedestrian clearances, or operation of the state highway, such modifications shall be reported to State's Region Traffic Engineer. State's Region Traffic Engineer will notify the local jurisdiction whenever timing changes that affect the operation of local street connections to the state highway are scheduled. All modifications shall follow guidelines set forth in the current Manual on Uniform Traffic Control Devices ("MUTCD"), and the current State Traffic Signal Policy and Guidelines.
18. City shall, upon completion of the Project and at its own expense, maintain the pavement surrounding the vehicle detector loops installed in the city street in such a manner as to provide adequate protection for said detector loops. Failure to do so may result in State requiring City to repair or replace the damaged loops at City's expense. Future City roadwork activities involving the detector loops may also result in the same State requirements. City shall also adequately maintain the pavement markings and signing installed in accordance with the approved signal plan sheets for the signal installation or current MUTCD standards.
19. State shall, upon completion of the Project and at its own expense, maintain the pavement surrounding the vehicle detector loops installed in the State highway in such a manner as to provide

adequate protection for said detector loops. State shall also adequately maintain the pavement markings and signing installed on the State highway in accordance with current State standards.

20. If City enters into a construction contract for performance of work on the Project located 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 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.
21. 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.
22. City shall maintain the landscaping and irrigation to be installed for all improvements behind the curbs or roadway. Maintenance along and on highway shall include replacement of dead or dying plants and trees, removal of litter, removal of weeds or weed control and tree trimming to maintain a 17 foot clear zone in the travel lane, leaf removal and irrigation for healthy sustainability of said landscaping.
23. City shall be responsible for all water and power costs associated with the landscape and irrigation installed as part of improvements behind the curbs or roadway. City shall ensure that the water and power companies send water and power bills directly to City.
24. 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 and sidewalks. 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 related landscaping and sidewalk 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.
25. City shall be responsible for the cost of decorative embellishment on any signal or separate illumination poles and shall be responsible for any decorative embellishment maintenance on such poles upon completion of City Projects. Any decorative lighting shall be the responsibility of the City for both electrical costs and maintenance. Such illumination shall be served by a separate system from the signal system. Any such additional illumination on the highway must be reviewed by the State Office of the State Traffic Engineer. State District Office shall coordinate all such reviews. Decorative poles and foundations installed on state highways must conform to State standards, as per Technical Bulletin TR07-06(B).
26. State may conduct periodic inspections during the life of City Certification Projects to verify that Projects are being properly maintained and continue to serve the purpose for which federal funds were provided.
27. State shall, at its own expense, maintain and operate the portions of the Project on State right of way.
28. This Agreement may be terminated by mutual written consent of both Parties.
29. 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.
30. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
31. 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.
32. 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.
33. 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.
34. State's Project Liaison for the Agreement is Justin Bernt, Region 1 Local Agency Liaison, 123 NW Flanders Street, 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.

35. City's Project Liaison for this Agreement is Steve Szigethy, Project Manager, 1120 SW Fifth Avenue Suite 800, 503-823-5117, steve.szigethy@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.

SIGNATURE PAGE TO FOLLOW

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 #19297) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

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:

Steve Szigethy, Capital Project Manager
1120 SW 5th Avenue, Suite 800
(503) 823-5117
steve.szigethy@portlandoregon.gov

State Contact:

Justin Bernt, Local Agency Liaison
123 NW Flanders Street
(503) 731-3016
justin.j.bernt@odot.state.or.us

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 _____

APPROVED AS TO LEGAL
SUFFICIENCY

By _____

Assistant Attorney General

Date _____

Exhibit A – Project Location Map



EXHIBIT B**MILESTONES AND SCHEDULES****Project Cost Estimate, Progress Reports and Project Change Request Process****Agreement No. 31303****Key Number: 19297****Project Name: East Portland Access to Employment and Education**

1. **Plan Review** – City shall submit to State 30%, 60%, 90%, and final plans for State’s review and comment.
2. **Project Management Plans** – Prior to authorizing any funds, State will work with City to establish Project charters and management plans that define the roles and responsibilities of the Parties as they relate to the Project.
3. **Monthly Progress Reports (MPRs)** – City shall submit monthly progress reports using MPR Form 734-2862, incorporated by reference and made a part of this Agreement. Each MPR is due by the fifth day of each month, starting the first month after execution of this Agreement and continuing through the first month after State issues Project Acceptance (Second Note) for the Project’s construction contract.

The 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 set forth 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.

Table 1: Project Milestones

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of Federal funds for the Preliminary Engineering phase of the Project	8/15/16
2	Obligation (Federal Authorization) of Federal funds for the Right of Way phase of the Project	8/15/17
3	Obligation (Federal Authorization) of Federal funds for the Construction phase of the Project	8/15/18

5. **Second Notification Requirement** – City shall issue Second Notification upon completion of on-site work. The anticipated and actual date for issuance of Second Notification shall be reported in the required monthly report as described in paragraph 3, above.
6. **Project Change Request (PCR) Process** - City must submit a PCR to State in the event that (i) any Project Milestone is delayed more than ninety (90) days; (ii) a Statewide Transportation

Improvement Program ("STIP") amendment is required; or (iii) there is any change to the scope of work or budget of the Project.

City must submit all PCRs using PCR Form 734-2936, incorporated by reference and made a part of this agreement. City shall submit the PCR form no later than thirty (30) days after the need for change becomes known to City. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A PCR may be rejected at the discretion of State.

The PCR form and instructions are available at the following website:

http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

7. **Design Exceptions:** Design Exceptions for elements of the Project located on State facilities shall be approved by State. Design Exceptions for elements of the Project located on state-owned portions of the National Highway System ("NHS") shall be approved by State and/or FHWA. City is responsible for Design Exceptions for elements of the Project located on City facilities, including locally-owned portions of the NHS, and shall follow the process described in the current Local Agency Guidelines manual.
8. **ADA Compliance:** All ramps on State facilities that are subject to the Americans with Disabilities Act ("ADA") shall meet State minimum construction standards. All ADA ramps on non-State facilities shall meet federal minimum construction standards. State shall provide ADA ramp design review for all ramps that are constructed as part of the Project. City shall submit to State all post-construction ramp measurements prior to the Second Notification Project Milestone. State will review all City post-construction ramp measurements and provide recommendations to City on ADA ramp acceptance on the Project prior to the Second Notification Project Milestone.
9. **Quality Assurance Testing:** The Contractor Quality Control Type in Section 00165 of the project special provisions shall specify the Project as a "Type A" Project. City will perform all Quality Assurance Testing on this "Type A" Project, except on State highways State will perform Quality Assurance Testing of work on SE Powell Boulevard (US 26).
10. **Consequence for Non-Performance:** If City fails to fulfill its obligations set forth in this Exhibit, does not assist in advancing the Project, or does not perform the tasks for which it is responsible under the Project Milestones, State may, in its discretion: (a) restrict City consideration for future funds awarded through Active Transportation Section-managed funding programs; (b) withdraw unused Project funds; and (c) terminate this Agreement. State may also choose to invoice City for expenses incurred by State for staff time to assist in completion of the final Project documentation and issuance of Third Notification.