

187992

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 31025
MULTIMODAL TRANSPORTATION ENHANCE PROGRAM (MTEP)
NE Columbia Blvd: Cully Blvd. & Alderwood Rd.**

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 "Agency," 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 Agency 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. Port of Portland applied for and received federal Multimodal Transportation Enhance (MTEP) funds to design and construct improvements to NE Columbia Blvd. between Alderwood Rd. and Cully Blvd., all of which are part of Agency's street system under the jurisdiction and control of Agency. Port of Portland is concurrently entering into Agreement number 31024 with State to finance the Project.
3. Port of Portland is concurrently entering into an agreement with Agency to authorize Agency to design, acquire right of way for, and administer the contract to construct the Port of Portland's NE Columbia Blvd: Cully Blvd. & Alderwood Rd. project.
4. Moving Ahead for Progress in the 21st Century Act (MAP-21) expanded the National Highway System (NHS) to incorporate all principal arterials, which were previously not included, including facilities owned by Local Public Agencies.
5. NE Columbia Blvd., NE Cully Blvd. and NE Alderwood Rd. are a part of the Agency's street system under the jurisdiction and control of Agency. Columbia Blvd. NE is a locally-owned and maintained Urban Principal Arterial incorporated into the NHS pursuant to MAP-21.

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

DEFINITIONS

1. "Contract Award" (construction projects) means the issuance of a Notice to Proceed (NTP) to the construction contractor.
2. "Contract Time" means amount of time for completing the bid item work under the contract.

3. "Final Acceptance" means written confirmation by Agency and State that the project has been completed according to the contract, with the exception of any latent defects and warranty obligations, if any, and has been accepted.
4. "Funding Ratio" means the relationship between MTEP funds and Total Project cost and Other Funds and the Total Project Cost. This ratio is established at the time the agreement is executed and does not change during the course of the project. The ratio governs the obligation of MTEP funds at the time of construction/consultant award or Project Closeout "Match" means the minimum amount Agency must contribute to match the federal aid funding portion of the project.
5. "MTEP" means Multimodal Transportation Enhance Program and may be funded by a combination of federal and state funds.
6. "Obligation" means Federal Highway Administration (FHWA) approval that allows a specific phase of a project to commence with spending that can be reimbursed with federal funds.
7. "Other funds" means other funding required to complete the project including but not limited to state, federal, and agency funds.
8. "Project Completion" (construction projects) means Final Acceptance of the project, Final Payment to the contractor has been made and project documentation is completed per the ODOT Construction Manual.
9. "Project Overruns" means the final cost estimate at contract award exceeds the estimated total project cost estimate in this Agreement, or the final actual project costs exceeds the final cost estimate at Contract Award.
10. "Project Underrun" means the final cost estimate at Contract Award is below the estimated total project cost in this Agreement, or the final actual project costs are below the final cost estimate at Contract Award.
11. "Project Closeout" means project is ready to close as there are no more expenditures associated with project.
12. "Total Project Cost" means the estimated amount as shown in this Agreement. This amount will include MTEP funds, local matching funds, and other funds as required to complete the project as stated in this Agreement.

TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to Agency designing and acquiring right-of-way for improvements on Columbia Boulevard between NE Alderwood Road and NE Cully Boulevard and to the Agency constructing improvements at the intersection of Columbia Boulevard and NE Alderwood Rd., hereinafter referred to as "Project." Agency shall acquire all right of way needed to construct the improvements at the intersection of Columbia Boulevard and NE Alderwood Rd. Agency may acquire additional right of way for improvements on NE Columbia Blvd. between NE Alderwood Rd. and NE Cully Boulevard. if Project funding is sufficient. The location of the Project is as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

City of Portland/State
Agreement No. 31025

2. The Project shall be conducted as a part of the Multimodal Transportation Enhance Program (MTEP) with funds provided under Title 23, United States Code and may include a combination of federal and state funds. Funding for this project comes from funds awarded to the Port of Portland under agreement 31024 and is subject to the terms of that Agreement. The Total Project cost is estimated at \$5,058,349, which is subject to change. MTEP federal and state funding for this Project shall be limited to \$4,538,856. All remaining costs, including the 10.27 percent match for all MTEP eligible costs, any non-participating costs, and all costs in excess of the available federal or state funds are addressed in a separate agreement (No. 31024) between State and the Port of Portland and a separate agreement between Agency and the Port of Portland. Agency agrees to allow State to review and comment on the agreement between Agency and the Port of Portland prior to the execution of this Agreement to insure that it is executed prior to the start of any work on this Project.
3. Project Underruns are subject to the terms of the funding agreement between State and Port of Portland, Agreement number 31024.
4. Project Overruns, match, any non-participating costs and all costs in excess of the available federal or state funds which occur at the time of Contract Award, or at the time of Project Closeout are not the responsibility of the State.
5. If State performs work throughout the duration of the Project, State will provide a preliminary estimate of State costs for said work to Agency. Prior to the start of each Project phase State will provide an updated estimate of State costs from that phase to Agency. Such phases generally consist of preliminary Engineering, Right of Way, Utility, and Construction. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per the Terms of this Agreement.
6. The scope, schedule, progress report requirements, and Project Change Request process are described in Exhibit B, attached hereto and by this reference made a part hereof. Agency agrees to the conditions set forth in Exhibit B.
7. Agency shall make all payments for work performed on the Project, including all construction costs, and invoice State for 100 percent of its costs. State shall reimburse Agency invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement and any non-participating costs will be the responsibility of the Agency. State shall simultaneously invoice FHWA and Agency for State's Project costs, and Agency 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 Agency to make such payments to State may result in withholding of Agency's proportional allocation of State Highway Trust Funds until such costs are paid. Agency understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.
 - 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 ODOT to Agency with the Notice to Proceed.
 - b. The indirect cost rate for this project at the time the agreement is written 79.27% and may change upon notice to State and ODOT's subsequent written approval. Agency may have other indirect cost rates for departments and or disciplines that have been approved

City of Portland/State
Agreement No. 31025

for use by their cognizant agency and ODOT and these rates may be used on the Project, as applicable.

8. Agency shall perform design (excluding bridge design), advertise, bid, award the construction contract, and perform construction administration. Agency to comply with all of the terms and conditions found in Certification Program Agreement No. 30890.
 - i. The Agency may issue work for right of way and appraisals for this Project under Price Agreement RFP TRN109 dated July 1, 2014 until the Price Agreement's 3 year term expires on July 1, 2017, or when the maximum amount of \$800,000 has used, whichever comes first.
9. State will submit the requests for federal funding to FHWA. 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 Agency expense. State's Regional Local Agency Liaison or designee will provide Agency with a written notice to proceed when FHWA approval has been secured and funds are available for expenditure on this Project.
10. State considers Agency 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.
11. Agency agrees to maintain all project improvements at its own expense.
12. 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.
13. Local Agency Certification Program Agreement No.30890 was fully executed on September 18, 2015. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
14. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
15. State may conduct periodic inspections during the life of Agency Certification Projects to verify that Projects are being properly maintained and continue to serve the purpose for which federal funds were provided.
16. Agency's request to construct this Project is approved by FHWA subject to the following:
 - a) For work performed on state-owned NHS route, design exceptions must be approved by State.
 - b) For work performed on state-owned NHS route, ADA ramp construction will be required to meet State's revised standards. State will also provide ADA ramp design and construction review and construction acceptance.
 - c) Agency will submit 30%, 60%, 90%, and final plans for review by State.

- d) The State Change Management Request process shall be followed when necessary.
 - e) Project Charters and Management Plans shall be established for the Project to establish roles and responsibilities of both Parties prior to authorizing funds.
 - f) Detailed project status reports are to be submitted on time in order for State to monitor progress toward meeting project delivery milestones.
 - g) Other requirements may be added as necessary after individual Project reviews have been completed.
17. 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 State, be indemnified by the contractor and subcontractor from and against any and all Claims.
18. 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.
19. This Agreement may be terminated by mutual written consent of both Parties.
20. 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 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 State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.

City of Portland/State
Agreement No. 31025

- 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.
21. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
22. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency'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 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 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.
23. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. Agency certifies and represents that the individual(s) signing this Agreement have (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.
25. 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.
26. 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. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Agency to State. 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.
27. State's Contact for this Agreement is Kelly Brooks, Policy and Development Manager, 123 NW Flanders Street, Portland, OR 97209, 503.731.3087, Kelly.BROOKS@odot.state.or.us or assigned

City of Portland/State
Agreement No. 31025

designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

28. Agency's Project Liaison for this Agreement is Dan Layden, Capital Program Manager, 1120 SW 5th Avenue, 503.823.2804, dan.layden@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.

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 (STIP), (Key #18837) 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/State
Agreement No. 31025

CITY OF PORTLAND, acting by and
through its elected officials

By _____

Title _____

Date _____

By _____

Title _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

Agency Legal Counsel

Date _____

Agency Project Liaison:

Dan Layden
Capital Program Manager
1120 SW 5th Ave. Rm 800
Portland, OR 97204
(503) 823-2804
dan.layden@portlandoregon.gov

State Contact:

Kelly Brooks
Region 1 Policy and Development
Manager
123 NW Flanders Street
Portland, OR 97209
503.731.3087
Kelly.BROOKS@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

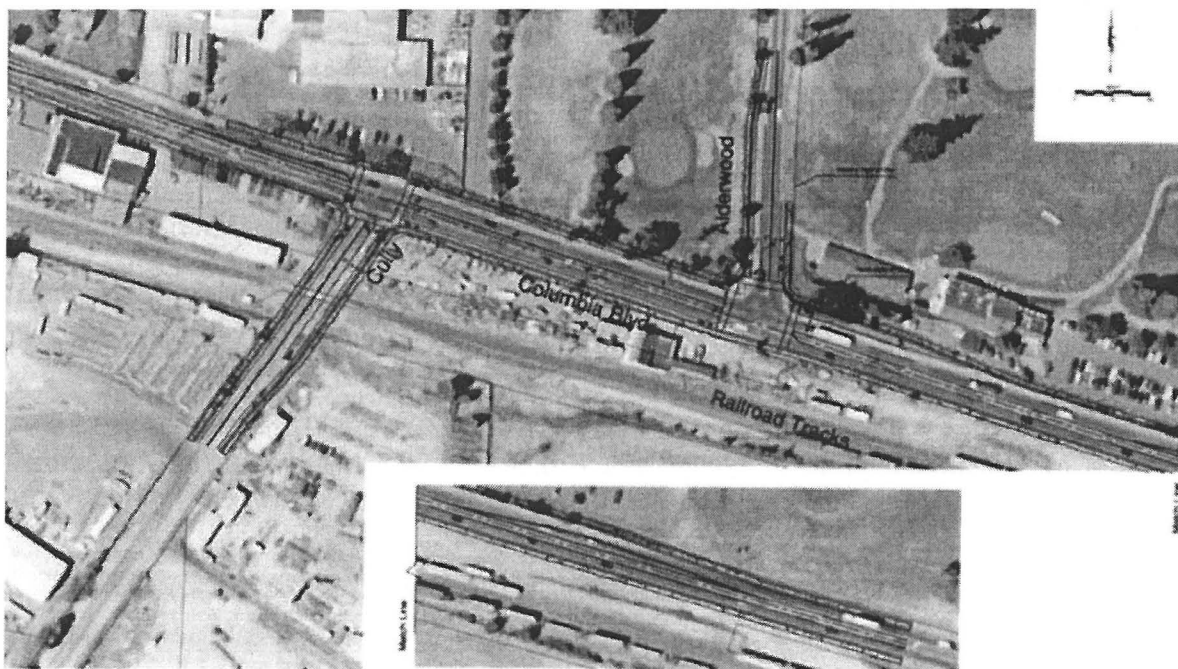


EXHIBIT B

Project Progress Reports and Project Change Request Process
Agreement No. 31025
Key Number: 18837
Project Name: NE Columbia Blvd., Cully Blvd. and Alderwood Rd.

1. Project Description

Description: Agency shall design and acquire right of way for improvements to NE Columbia Blvd. between NE Alderwood Rd. and NE Cully Blvd. and construct improvements at the intersection of Columbia Blvd. and NE Alderwood Rd.

Deliverables:

- Design the Project
- Acquire right of way for the Project, as project funding allows
- Construct a taper on Columbia Blvd.'s east leg at Alderwood for future side by side left-turn lanes between Cully and Alderwood
- Construct sidewalks with curb on Alderwood and Columbia Blvd. in the area of the intersection
- Construct sidewalk on north side of Columbia Blvd. between Alderwood and Cully
- Install or replace signal at intersection of NE Columbia Blvd. and NE Alderwood Rd.
- Install planter strips along Alderwood

Project Description and Deliverables may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

2. This Project is subject to progress reporting and project change process as stated below.
3. **Monthly Progress Reports (MPR)** - Agency shall submit monthly progress reports using MPR Form 734-2935, incorporated by reference and made a part of this Agreement. The Monthly Progress Report is due by the 5th day of each month, starting the first month after execution of this Agreement, and continuing through Project completion. .

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

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

Table 1: Project Milestones – Construction Project

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of federal funds for the preliminary engineering phase of Project	08/2016
2	Obligation (Federal Authorization) of federal funds for the right of way phase of the Project	08/2017
3	Obligation (Federal Authorization) of federal funds for the construction phase of Project	08/2018

5. Requirements for Construction Projects

- a. **Second Notification** –Upon completion of on-site work Second Notification shall be issued. Second Notification is further defined in the Definitions Section of this Agreement. The anticipated and actual date for issuance of Second Notification shall be reported in the required monthly report as described in paragraph 3, above.
- b. **Third Notification** – Issuance of Third Notification must be received within 120 days from the issuance of Second Notification as stated above with the exception of any Establishment Period noted in the Construction Contract or any remaining responsibilities of the Contractor. If Third notification is not issued within the required timeframe, Consequences for Non-Performance, paragraph 8 below may apply.

6. Project Change Request (PCR) Process - Agency must obtain approval from State’s Liaison for changes to the Project’s scope, schedule, or budget as specified in paragraphs 5a, 5b and 5c, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

- a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit). A significant change in project scope includes any scope element or item that:
 - i. Would increase project cost by 10% or \$100,000, whichever is less;
 - ii. Is outside of the intent of the current project scope, as determined by the ODOT Program Manager; or,
 - iii. Does not meet the minimum standards of the American Association of State Highway and Transportation Officials (AASHTO) or the Manual on Uniform Traffic Control Devices (MUTCD).
- b. **Schedule**– A PCR is required if Agency or State’s Project Liaison anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).

City of Portland/State
Agreement No. 31025

- c. **Budget** – Total Project Cost and approved funds for the Project are controlled by Terms of Agreement, paragraph 2 of this Agreement.
7. **PCR Form** - Agency must submit all change requests using PCR Form 734-2936, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion of State's Area Manager.

The fillable PCR form and its instructions are available at the following website:
[http://www.oregon.gov/ODOT/TD/AT/Pages/Forms Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

8. **Consequence for Non-Performance** - If Agency fails to fulfill its obligations in paragraphs No. 3 through No. 6 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's managed funding programs, (b) withdrawing unused Project funds, and (c) terminating this Agreement as stated in Terms of Agreement, Paragraph No. 20 of this Agreement.