

Misc. Contracts and Agreements No. 31201  
Cross Ref. Master Certification Agreement No. 30890

**Oregon Department of Transportation  
LOCAL AGENCY CERTIFICATION PROGRAM  
Supplemental Project Agreement No. 31201  
SURFACE TRANSPORTATION PROGRAM - URBAN  
NE Columbia Blvd at MLK Jr Blvd**

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 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 (this "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. OR 99E (Pacific Highway East), also known as NE Martin Luther King Jr. Boulevard, is a part of the State highway system under the jurisdiction and control of the Oregon Transportation Commission. Columbia Boulevard is a part of the Agency's street system under the jurisdiction and control of Agency.

**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 Agency agree to Agency performing design, engineering, and construction work for freight movement improvements at the intersection of NE Columbia Boulevard and NE Martin Luther King Jr. Boulevard, and sidewalk improvements along NE Martin Luther King Jr. Boulevard north to Kilpatrick Street (the "Project"). The location of the Project is approximately as shown on the detailed map marked "Exhibit A," attached hereto and by this reference made a part hereof.
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 estimated cost of the Project is \$3,559,259, which is subject to change. STP urban funds for this Project will be limited to \$3,014,264. State will contribute \$200,000 in state funds available to Region 1 for the sidewalk improvements portion of the Project along NE Martin Luther King Jr. Boulevard north to Kilpatrick Street. Agency is responsible for all remaining costs, including the 10.27 percent match for all eligible costs, any non-participating costs, and all costs in excess of the available federal or state funds.

3. State will provide Agency with a preliminary estimate of the cost of State's work on the Project. Prior to the start of each Project phase, State will provide to Agency an updated estimate of State's costs from that phase. Such Project 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 costs incurred as per the terms of this Agreement
4. Agency 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 Agency at the pro-rated federal share. Agency is responsible for all costs beyond the federal and state reimbursement, any deposited local funds, and any non-participating costs. State shall simultaneously invoice the Federal Highway Administration ("FHWA") and Agency for State's Project costs and, upon receipt of invoice, Agency will reimburse State for the federal-aid matching State share and any non-participating costs as determined in accordance with paragraph number two (2) above. Agency's failure to make such payments to State may result in the 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.
5. Indirect Cost Rate:
  - 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 State shall provide to Agency with the written notice to proceed.
  - b. The indirect cost rate for the Project at the time this Agreement is executed is seventy-nine and twenty-seven one hundredths percent (79.27%). The indirect cost rate may change upon notice to State and State's subsequent written approval.
6. Agency shall design, advertise, bid, award the construction contract, and perform construction contract administration for the Project. Agency shall comply with all of the terms and conditions set forth in Certification Program Agreement No. 30890.
7. State will submit requests for federal funding to FHWA. The federal funding for this Project is contingent upon approval by 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.
8. 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.

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9. 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.
10. 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.
11. This Agreement shall supersede and replace Agreement No. 27883 and its supplements in their entirety. Agreement No. 27883 is terminated upon execution of this Agreement. Bills for preliminary engineering work incurred prior to the replacement of Agreement No. 27883 shall be invoiced by Agency and paid by State under this Agreement.
12. 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.
13. State may conduct periodic inspections during the Project to verify that the Project is being properly maintained and continues to serve the purpose for which federal funds were provided.
14. The useful life of the Project is twenty (20) years.
15. Agency 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. Agency agrees to comply with all provisions of any State issued permits to "Occupy or Perform Operations Upon a State Highway" and to obtain Highway Approach Permits from State's District 2B Office for all public roads and private properties adjacent to the highway, if such permits are needed under Oregon Administrative Rule (OAR) 734, Division 51. Agency shall comply with all provisions of required permits, and shall require its developers, contractors, subcontractors, and consultants performing such work to comply with such provisions.
16. State grants Agency, or others designated by Agency and permitted by the 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 to Agency, or others designated by Agency, the right to enter and occupy State right of way for the purpose of routine maintenance of all Project-related landscaping and sidewalk improvements. Prior to commencing activities, Agency shall contact State's Regional Liaison to determine if a permit is required from State's District Office for all other activities beyond the listed routine maintenance.
17. Agency grants State or others designated by State the right to enter onto and occupy Agency right of way for the purpose of inspection, audit, maintenance and



operation of State-owned and other designated facilities, and performance of any other State duty or obligation.

18. Pursuant to OAR 734-020-0430, Agency 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.
19. Agency is responsible for all maintenance, inspections, testing, and for providing power for all traffic signals that are part of the Project.
20. Agency, 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.
21. Traffic signal timing shall be the responsibility of State, unless there is an agreement that specifically allows Agency 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 reserves the right to request adjustments when needed. In cases where the Agency 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*, and the current *ODOT State Traffic Signal Policy and Guidelines*.
22. Agency 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. Agency shall also adequately maintain the pavement markings and signing installed on the State highway in accordance with current State standards.
23. Agency, as a certified local public agency, will follow all requirements set forth in "Exhibit B," attached hereto and by this reference made a part hereof.
24. If Agency enters into a construction contract for performance of work on the Project in which Agency is contracting work on a State highway, then Agency will require its contractor to provide the following:
  - a. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
  - b. Contractor shall indemnify, defend and hold harmless Agency, 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.

- 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 Agency. 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 \$2,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$4,000,000.
- 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 Agency 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 or its insurer(s) to State and Agency. 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. Agency 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 Agency 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 Agency'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.
- 25. Agency 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. Agency may require the adjacent property owners to fund or perform maintenance of the behind the curb improvements. Agency 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 Agency contractors or property owners, or if right of way behind the curb is partly or in whole State right of way.
- 26. Agency 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.
- 27. Agency shall be responsible for one hundred percent (100%) of water and power costs associated with the landscape and irrigation installed as part of improvements behind the curbs or roadway. Agency shall ensure that the water and power companies send water and power bills directly to Agency.
- 28. State hereby grants the Agency, or others designated by the Agency 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 Agency or others designated by Agency 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 permit prior to said activities. If Agency intends to perform such activities, it shall contact the appropriate State's District Office to see if a permit is required.
- 29. Agency 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 Agency Projects. Any decorative lighting shall be the responsibility of the Agency 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).
- 30. Except as otherwise set forth in this Agreement, State shall, at its own expense, maintain and operate the portions of the Project on State right of way.

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31. 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.
32. Any such indemnification shall also provide that neither Agency 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.
33. This Agreement may be terminated by mutual written consent of both Parties.
34. 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;
  - 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.
35. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
36. 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.
37. The Parties 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.
38. 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.
39. 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.
40. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 30890, as amended, and all attached exhibits constitute 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.



41. State's Project Liaison for this Agreement is Justin Bernt, Local Agency Liaison, 123 NW Flanders Street, Portland, OR 97209, (503) 731-3016, [justin.j.bernt@ODOT.state.or.us](mailto: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.
42. Agency's Project Liaison for this Agreement is Winston Sandino, Project Manager, 1120 SW 5<sup>th</sup> Avenue, Room 800, Portland, OR 97204, (503) 823-5767, [winston.sandino@portlandoregon.gov](mailto:winston.sandino@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.

**SIGNATURE PAGE TO FOLLOW**

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**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 #13502) 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 \_\_\_\_\_

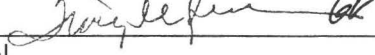
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By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

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

CITY ATTORNEY

Date 10/10/16

**Agency Contact:**

Winston Sandino  
Project Manager  
1120 SW 5<sup>th</sup> Avenue, Room 800  
Portland, OR 97204  
(503) 823-5767  
winston.sandino@portlandoregon.gov

**State Contact:**

Justin Bernt  
Local Agency Liaison  
123 NW Flanders Street  
Portland, OR 97209  
(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 \_\_\_\_\_

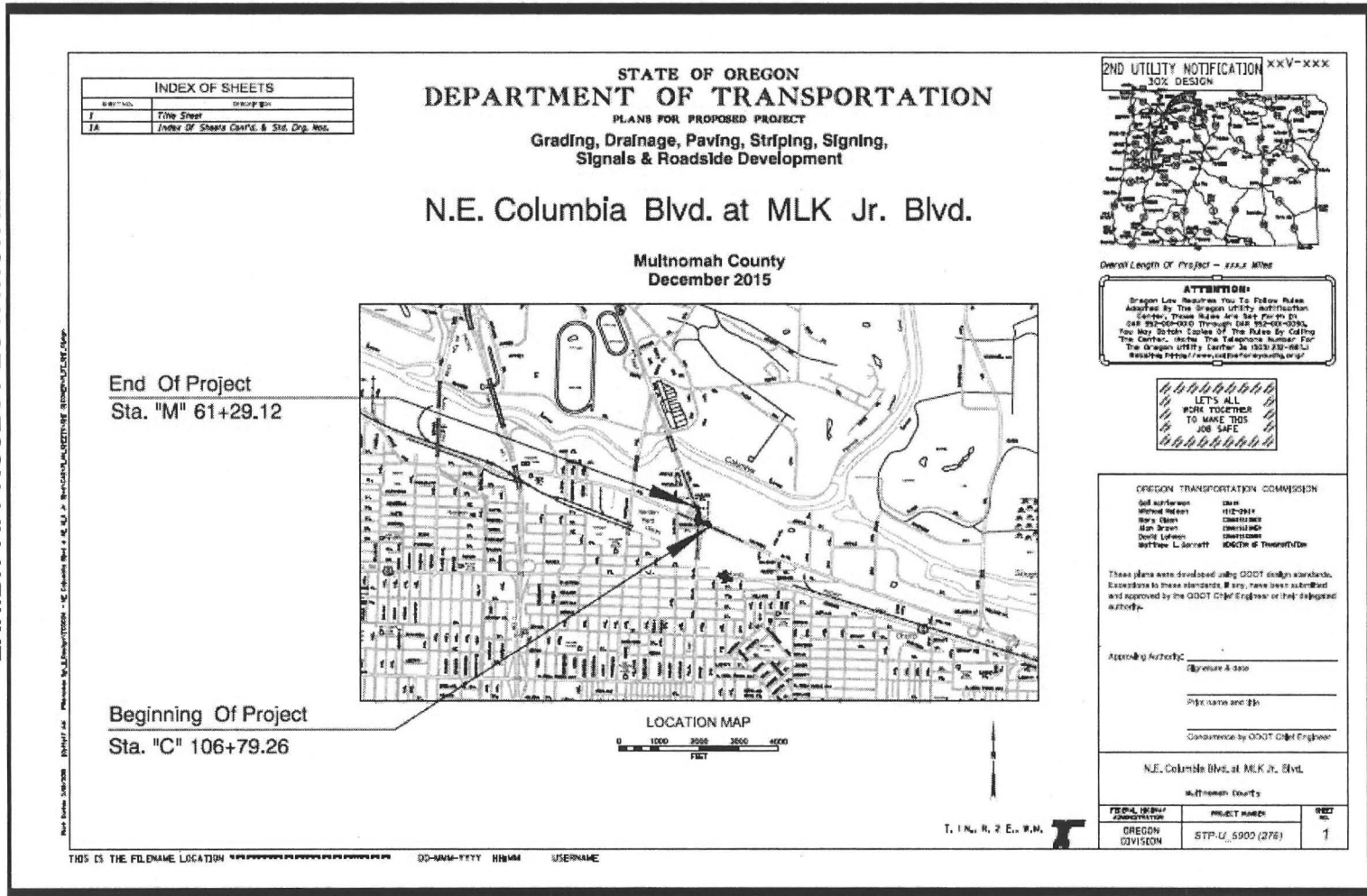
**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_

Assistant Attorney General

Date \_\_\_\_\_

EXHIBIT A: PROJECT LOCATION MAP





**EXHIBIT B**  
**PROJECT MILESTONES AND SCHEDULES**  
**Agreement No. 31201**  
**Key No. 13502**

1. **Project Description**: Agency will perform design, engineering, and construction work for freight movement improvements at the intersection of NE Columbia Boulevard and NE Martin Luther King Jr. Boulevard, and sidewalk improvements along NE Martin Luther King Jr. Boulevard north to Kilpatrick Street
2. **Plan Review**: Agency shall submit to State 30%, 60%, 90%, and 100% plans for State's review and comment.
3. **Project Management Plans**: Prior to authorizing any funds, State will work with Agency and establish Project charters and management plans that set forth in more detail the roles and responsibilities of the Parties set forth in this Agreement throughout each phase of the Project.
4. **Project Change Request (PCR)**: Agency 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.

Agency must submit all PCRs using PCR Form 734-2936, incorporated by reference and made a part of this agreement. Agency shall submit the PCR form 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 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](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

5. **Monthly Progress Report (MPR)**: Agency shall submit an MPR each month to State's project liaison. Agency shall use MPR Form 734-2935, 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 Notification or Agency equivalent) for the Project's construction contract.

The MPR form and 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)

6. **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**

	<b>Milestone Description</b>	<b>Completion Date</b>
1	Obligation (Federal Authorization) of Federal funds for the Preliminary Engineering phase of the Project	Completed
2	Obligation (Federal Authorization) of Federal Funds for the Right of Way phase of the Project	Completed
3	Obligation (Federal Authorization) of Federal Funds for the Construction phase of the Project	11/15/16

7. **Second Notification:** Agency shall issue Second Notification, or Agency equivalent, upon completion of on-site work. Agency shall report the anticipated and actual date for issuance of Second Notification, or Agency equivalent, in the MPRs described in Paragraph 3-4 above.

8. **Americans with Disabilities Act Compliance:**

- a. **General:** Agency agrees to comply with the Americans with Disabilities Act of 1990 ("ADA") as identified in paragraph 1 of the General Provisions section of Local Agency Certification Program Agreement No. 30890.
- b. **ADA Design Standards and Construction Specifications:** With respect to ADA-related design standards and construction specifications, Agency agrees to comply with State's design standards and construction specifications and State's design exception documentation and approval requirements for projects on the State system or the local agency system.
- c. **ODOT ADA Inspection Forms:** Prior to issuing Second Notification, or Agency's approved equivalent, per State Standard Specification 00180.50(g), Agency agrees to submit to State ODOT Form 734-5020 for all ramps that are constructed or updated as part of this Project. Only forms documenting compliance with State's standards will be accepted by State, unless there is a State-approved design exception on file to justify not meeting ADA standards.

ODOT Form 734-5020 is available at the following website:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>

- d. **Reimbursement:** State will not reimburse Agency for work that does not meet the applicable ADA standards without an approved design exception

regardless of whether the work is on a State-owned or an Agency-owned facility.

- e. **On-going Inspection Obligation:** Agency shall, at its own expense, periodically inspect the Project upon completion and throughout the useful life of the Project to ensure continuing compliance with ADA standards. This provision shall survive termination of the Agreement.
9. **Quality Assurance Testing:** Agency is responsible for all Quality Assurance Testing on this Project and must comply with the provisions of State's Manual of Field Testing Procedures.
10. **Consequences of Non-Performance:** If Agency fails to fulfill its obligations in paragraphs 1 through 8 of this Exhibit, does not assist in advancing the Project, or does not perform the tasks for which it is responsible under the Project Milestone Schedule, State may, in its discretion: (a) restrict Agency 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 Agency for expenses incurred by State for staff time to assist in completion of the final Project documentation and issuance of Third Notification.