



RESOLUTION 2013-058

AUTHORIZING INTERGOVERNMENTAL AGREEMENTS (IGA) WITH THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT) TO ASSIST IN THE ALLOCATION OF FEDERAL GRANT FUNDS TO PLAN, DESIGN AND CONSTRUCT THE CEDAR CREEK TRAIL

WHEREAS, the City of Sherwood was awarded a federal Metropolitan Transportation Improvement Program (MTIP) Regional Flexible Fund grant for the planning, design, and construction of the Cedar Creek Trail; and

WHEREAS, the MTIP schedules spending of federal transportation funds in coordination with significant State and local funds in the Portland metro region; and

WHEREAS, ODOT provides the oversight and administration of federal regulations regarding project eligibility, air quality impacts, environment justice and public involvement through this grant; and

WHEREAS, by the authority granted in Oregon Revised Statute (ORS) 190.110, ODOT may enter into agreements with local governments for the performance of any or all functions and activities that are a party to the agreement, its officers, or agents have the authority to perform; and

WHEREAS, Highway 99W is a part of the State highway system under the jurisdiction and control of the Oregon Transportation Commission for which a portion of the Cedar Creek Trail project will cross; and

WHEREAS, the Cedar Creek Trail has been a goal for both the Sherwood City Council and the Sherwood Parks & Recreation Advisory Board; and

WHEREAS, the Regional Transportation Plan (RTP), the City's adopted Transportation System Plan, Parks Master Plan, Stella Olsen Park Master Plan, and Metro's Ice Age Tonquin Trail Master Plan (2013) all identify a trail system within the Cedar Creek corridor between Stella Olsen Park and the National Wildlife Refuge; and

WHEREAS, the Council authorized staff through Resolution 2010-18 to pursue funding opportunities to the greatest extent possible as a means of providing a multi-use trail between Old Town and Roy Rogers Road, ultimately connecting to the West Wayside Parking Lot at the Tualatin River National Wildlife Refuge, known as the Cedar Creek Trail; and

WHEREAS, the City has previously approved special funding efforts for the Cedar Creek Trail via Resolutions 2008-030, 2005-068, 1998-773, and 1998-728; and

WHEREAS, the City must enter into an IGA with ODOT prior to any release of funds for the initiation of the work being charged to the project; and

WHEREAS, through the signing of the IGA the City is committed to plan, design and construct the Cedar Creek Trail and is also committed to providing local staff and resources to meet the required local match of \$585,091, which is 10.27% of the total estimated project cost of \$5,697,092; and

WHEREAS, the Cedar Creek Trail project has been divided into two separate projects because the trail segments were at different stages of planning and design and therefore ODOT requires two separate IGA's which are attached as Exhibit 1 and 2;

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1: City Council authorizes the City Manager to enter into two separate intergovernmental agreements (IGAs), between the City of Sherwood, a municipal corporation, and ODOT, a political subdivision of the State of Oregon, relating to the use of MSTIP funds for the planning, design and construction of the Cedar Creek Trail. Draft copies of the IGAs are attached to this resolution as Exhibit 1 and 2. Final IGAs with no substantive changes will be forwarded to the City Manager for signature after review by the City Attorney's office.

Section 2: This Resolution shall be effective as of the date of its adoption by the City Council.

Duly passed by the City Council this 5th day of November 2013.



Bill Middleton, Mayor

Attest:



Sylvia Murphy, MMC, City Recorder

**LOCAL AGENCY AGREEMENT
CONGESTION MITIGATION AND AIR QUALITY PROGRAM
CEDAR CREEK/: OR99W – MURDOCK 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 SHERWOOD, 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. Oregon Route (OR) 99W is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. SW Murdock Road, a portion of SW Oregon Street, SW Meinecke Road and SW Langer Farms Parkway are part of the Sherwood city street system under the jurisdiction and control of Agency. A portion of SW Oregon Street is a part of the County road system and under the jurisdiction and control of Washington County.
2. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State and Agency entered into Agreement No. 726 on May 28, 2002, and Amendment No. 1 on June 27, 2003, for the purpose of realigning and signalizing the intersection of OR 99W at SW Meinecke Road/Handley Street and various other access management improvements. For the purpose of this Agreement, all maintenance and power of the traffic signal located at OR 99W and SW Meinecke Road shall remain in effect as described in Agreement No. 726.

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 design, permit, and construct the Cedar Creek Trail from OR 99W southwest to SW Oregon Street and Murdock Road, hereinafter referred to as "Project." The Project will provide connections between neighborhoods and land-uses. The Project will construct 1.58 miles of multi-use path beginning with safety enhancements at the existing signalized at-grade crossing of OR 99W at SW Meinecke Road. The trail will then head east into the Cedar Creek Corridor and then south to Stella Olsen Park where it connects to the existing boardwalk/trail system that runs through Old Town Sherwood and

terminates at SW Langer Farms Parkway and the railroad tracks. The Project will also extend the existing 12-foot wide concrete path east along SW Oregon Street to SW Murdock Road. The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. This Agreement is conditioned upon Agency entering into a separate agreement with Washington County to address any use or improvements on Washington County facilities. The agreement with the County shall cover but is not limited to any work performed within County right of way, on-going maintenance responsibilities, power, etc. Said agreement between Agency and Washington County shall be fully executed before commencement of the first phase of Project work.
3. This Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The total Project cost is estimated at \$5,232,000, which is subject to change. The CMAQ funds are limited to \$4,694,674, with Agency providing the match and non-participating costs, including all costs in excess of the available federal funds. Agency shall be responsible for determining the amount of federal funds to be applied to each phase of the Project. Agency is not guaranteed the use of unspent funds for a particular phase of work. It is Agency's responsibility to notify State in advance of State obligating the funds for a subsequent phase if Agency wants to release funds on the current authorized phase(s) of work.
4. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
5. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is title 20.205, Highway Planning and Construction.
6. 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.

7. 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 anytime 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.
8. 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.
9. This Agreement may be terminated by mutual written consent of the Parties.
10. 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.

11. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
12. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
13. Agency, as a recipient of federal funds, pursuant to this Agreement with the 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 the State to return funds to the Federal Highway Administration, hold harmless and indemnify the 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.
14. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
15. 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.
16. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
17. State's Project Manager for the Agreement is Michele Thom, Local Agency Liaison, 123 NW Flanders Street, Portland, OR (503) 731-8279, michele.r.thom@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.

Agency/State
Agreement No. 29238

18. Agency's Project Manager for this Agreement is Michelle Miller, Senior Planner, 22560 SW Pine Street, Sherwood OR 97140, 503-625-4242, millerm@sherwoodoregon.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 2012-2015 Statewide Transportation Improvement Program, (Key #18026) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

Signature page to follow

Agency/State
Agreement No. 29238

CITY OF SHERWOOD, by and through its
officials

By _____
City Manager

Date _____

By _____
Agency Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Counsel

Date _____

Agency Contact:

Michelle Miller
22560 SW Pine Street
Sherwood, OR 97140
(503) 625-4242
millerm@sherwoodoregon.gov

State Contact:

Michele Thom, Local Agency Liaison
123 NW Flanders Street
Portland, OR 97209
(503) 731-8279
michele.r.thom@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
CMAQ Program Coordinator

Date _____

By _____
Region 1 Manager

Date _____

By _____
District 2B Manager

Date _____

By _____
Project Delivery Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

EXHIBIT A – Project Location Map



Map 15: Tile 9 - Cedar Creek Corridor (Southern Portion)

**Ice Age Tonquin Trail Master Plan
 Preferred Alignment**

Source: Metro Data Resource Center



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|---|--|---|--|--|
| <ul style="list-style-type: none"> Existing Trail Proposed Blue Limited-Access Proposed Boardwalk Proposed Shared Roadway Proposed Shared Use Path | <ul style="list-style-type: none"> Alignment Under Review Potential Easement or Acquisition Needs Existing Neighborhood Connection Potential Future Connection Wetland Park or Natural Area River/Stream Drainage Ditch | <ul style="list-style-type: none"> Proposed Grade-Separated Crossing Proposed At-Grade Crossing (signalized) Proposed At-Grade Crossing (unsignalized) Potential Wayfinding Sign Location | <ul style="list-style-type: none"> Mt. Education or Interpretive Opportunity Proposed Trailhead Existing Parking at Trailhead | <ul style="list-style-type: none"> Prospectus Segment Prospectus Cedar Creek Trail Project 1 |
|---|--|---|--|--|



Map 14: Tile 8 - Tonquin Road/Oregon Street to Downtown Sherwood

Ice Age Tonquin Trail Master Plan
Preferred Alignment
Source: Metro Data Resource Center



- | | | | | |
|--|---|--|---|---|
| <ul style="list-style-type: none"> Existing Trail Proposed Bike Lanes/Overlays Proposed Boardwalk Proposed Shared Roadway Proposed Shared Use Path | <ul style="list-style-type: none"> Alignment Uncertain Potential Assessment of Acquisition Needed Existing Interim/Proposed Connector Potential Future Connection Wetlands Park or Natural Area River/Stream/Drainage Ditch | <ul style="list-style-type: none"> Proposed Grade-Separated Crossing Proposed At-Grade Crossing (Optimized) Proposed At-Grade Crossing (Unsignalized) Potential Wayfinding Sign Location | <ul style="list-style-type: none"> Art, Educational, or Interpretive Opportunity Proposed Trailhead Existing Parking or Trailhead | <ul style="list-style-type: none"> Prospectus Segment |
|--|---|--|---|---|
- Prospectus: Cedar Creek Trail Project 1

**ATTACHMENT NO. 1 to Agreement No. 29238
SPECIAL PROVISIONS**

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, assist State with acquisition of necessary right of way and/or easements, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
3. State may make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
4. The indemnification language in Attachment No. 2, Federal Standard Provisions, Paragraphs 46 and 47; and Paragraph 4 in regards to tort claims, shall be replaced with the following language:
 - a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
 - b. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative

intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

- c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
 - d. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
5. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
 6. In the event that illumination is included and upon completion of the Project, Agency shall, at its own expense, maintain and supply power for Project illumination.
 7. Maintenance and power responsibilities shall survive any termination of this Agreement.

ATTACHMENT NO. 2

FEDERAL STANDARD PROVISIONS

JOINT OBLIGATIONS PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in [Title 49, CFR, Part 26](#), which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in [Title 49, CFR, Part 26](#), have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with [Title 49, CFR, Part 26](#), to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of [Title 49, CFR, Part 26](#), in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of [ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270](#), incorporated herein by reference and made a part hereof; [Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide \(FAPG\).](#)

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The

program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

PROJECT ACTIVITIES

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
 - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has

written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

- b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which

the local agency participates. The cost of this audit can be partially prorated to the federal program.

30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title [23 CFR](#) Parts [1.11](#), [140](#) and [710](#). Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition ([Title 49 CFR 18.42](#)).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
 - a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

STANDARDS

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "[State Highway Design Manual](#)" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "[Oregon Standard Specifications for Highway Construction](#)".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "[Oregon Bicycle and Pedestrian Design Guide](#)", unless otherwise requested by Agency and approved by State.
40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
41. All plans and specifications shall be developed in general conformance with the current "[Contract Plans Development Guide](#)" and the current "[Oregon Standard Specifications for Highway Construction](#)" and/or guidelines provided.

42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

GRADE CHANGE LIABILITY

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency 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 anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency 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 any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

49. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

50. Agency certifies by signing the Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.

DRAFT: October 25, 2013

**INTERGOVERNMENTAL/PLANNING AGREEMENT
CEDAR CREEK TRAIL: ROY ROGERS RD – OR 99W**

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 SHERWOOD, 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. Oregon Route (OR) 99W is a part of the State highway system under the jurisdiction and control of the Oregon Transportation Commission. SW Roy Rogers Road and SW Edy Road are a part of the County road system under the jurisdiction and control of Washington County. Agency will coordinate with Washington County on use of the County's roadway.
2. By the authority granted in Oregon Revised Statute (ORS) 190.110, State agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
3. Agency desires to enter into this Agreement in order to develop a project for the Metropolitan Transportation Improvement Program (MTIP). The MTIP schedules spending of federal transportation funds in coordination with significant State and local funds in the Portland metro region. It demonstrates how these projects relate to federal regulations regarding project eligibility, air quality impacts, environmental justice and public involvement.
4. State, as the state agency responsible for pass-through Federal-Aid Congestion Mitigation and Air Quality (CMAQ) funds, is therefore a Party to this Agreement.
5. State and the Portland Urbanized Area Metropolitan Planning Organization (Metro), have entered into Intergovernmental Agreement No. 24862, ODOT/MPO/Transit Operator Agreement, and Intergovernmental Agreement No. 29435, State Fiscal Year 2014 Unified Planning Work Program (UPWP), wherein State and Metro cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. The project that is the subject of this Agreement is listed in the UPWP, as well as Metro's and State's respective roles and responsibilities. Metro is not a party to this Agreement due to the existence of Agreement No. 24862 and the UPWP, and any Metro responsibilities mentioned in this Agreement are based on its obligations in these two agreements.
6. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.

Key No. 18280

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. State and Agency agree that Agency shall conduct a feasibility study to reinforce safety improvements and passage for bicycle and pedestrian crossing between neighborhoods and land-uses throughout the City of Sherwood, which are currently incomplete or obstructed by major arterial and collector road barriers, especially along OR 99W, SW Edy Road and SW Roy Rogers Road, hereinafter referred to as "Project," as described in Exhibit A (scope, schedule, budget summary and vicinity map) , attached hereto and by this reference made a part hereof.
2. This Agreement is conditioned upon Agency entering into a separate agreement with Washington County to address any use or improvements on Washington County facilities. The agreement with the County shall cover, but not be limited to, any work performed within County right-of-way, on-going maintenance responsibilities, power, etc. Said agreement shall be fully executed before commencement of the first phase (planning phase) of the Project work.
3. A personal services contractor, hereinafter referred to as "Consultant," shall be selected by Agency, pursuant to the process established by ORS 279C.125 and Oregon Administrative Rule (OAR) 137-048-0260, to perform the Project. It is the intent of the Parties that State will enter into a personal services contract directly with Consultant, and Agency will manage and direct the Consultant's work in accordance with this Agreement.
4. This Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The total Project cost is estimated at \$467,000, which is subject to change. The CMAQ funds are limited to \$419,039, with Agency providing the matching funds, which are estimated to be \$47,961. Agency shall also be responsible for all non-participating costs. Any unused funds shall be moved to the next phases of work for this Project.
5. The term of this Agreement shall begin on the date all required signatures are obtained and the Federal Highway Administration (FHWA) has given written notification to State of its approval of the use of federal funds on the Project. Upon approval by FHWA, State shall send a Notice to Proceed (NTP) to Agency indicating that FHWA approval has been received. This Agreement shall terminate on completion of the Project and final payment, or two (2) calendar years following the date of the NTP, whichever is sooner. This Agreement may be amended only upon mutual written consent of all Parties.
6. The federal funding for this Project is contingent upon approval by FHWA. Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency's expense.
7. 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.

AGENCY OBLIGATIONS

1. Agency shall be responsible for the performance of its share of the work described in Exhibit A.
2. Agency has confirmed with Metro that sufficient funds from Metro's Federal Urban CMAQ allocation are available and authorized for expenditure to pay the costs of the Project. Agency certifies that sufficient funds are available and authorized to pay the required match to the Federal CMAQ allocation. Agency is responsible for the required match funds and any non-participating costs beyond the federal reimbursement.
3. Agency shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from the State, forward to State an advance deposit or irrevocable letter of credit for the amount of \$47,961, for Agency's estimated match requirement, as described above under Terms of Agreement, paragraph 4.
4. Metro's project manager for this Project is Ted Leybold, Principal Transportation Planner, 600 NE Grand Avenue, Portland, OR 97232, ted.leybold@oregonmetro.gov, (503) 797-1759.
5. Pursuant to the contract to be entered into between State and Consultant, upon receiving invoices and required supporting documentation from Consultant, Agency shall review the invoices and required supportive documentation regarding specific tasks and the progress on said tasks as shown in Exhibit A. Agency shall send its recommendation of approval or rejection directly to State's Project Manager for review and approval.
6. The invoices and required supportive documentation set forth under Agency Obligations, paragraph 5 shall be submitted for periods of not less than one (1) month duration, based on actual eligible expenses incurred. Invoices shall display one hundred (100) percent of total eligible expenses incurred during the period of the invoice, and identify any matching amounts if applicable. Invoices shall also display a categorical breakdown of costs, such as personnel costs (salary and benefits), other direct charges, and indirect charges that are appropriate for this Project. Documentation must be received and reviewed by Metro before payment will be made and must include copies of receipts for expenditures of system-generated accounting reports that document actual expenses incurred.
 - a. Eligible Project expenses are those deemed allowable by OMB Circular A-87.
 - b. In the event the invoice is not approved, State shall request corrective action be taken and accomplished prior to approval and payment of the invoice. The invoice shall be resubmitted with documentation supporting completion of the corrective action.
7. Agency shall keep accurate cost accounting records. The cost records and accounts pertaining to the work covered by this Agreement shall be retained by Agency for a period of six (6) years following final payment. Copies shall be made available upon request to State and State may request a copy of Agency's records pertaining to this Project at any

time. When the actual total cost of the Project has been computed, Agency shall furnish State with an itemized statement of final costs.

8. If Agency determines that another personal services contractor(s) besides Consultant is necessary to accomplish any work described in Exhibit A, then Agency and State shall follow a similar process as described in Terms of Agreement, paragraph 4, to select the contractor.
9. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
10. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
11. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
12. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
13. Agency's Project Manager for this Project is Michelle Miller, Senior Planner, 22560 SW Pine Street, Sherwood OR 97140, (503) 625-4242, millerm@sherwoodoregon.gov, or assigned designee upon individual's absence. Agency shall notify State's Project Managers in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall be responsible for obtaining FHWA approval to obligate the CMAQ funds for this Project.
2. Upon approval by FHWA, State shall send a NTP to Agency and copy Metro.

3. State shall be responsible for the performance of its share of the work described in Exhibit A as a Project expense chargeable against the Project.
4. In consideration for the services performed, and upon receipt of monthly Agency reimbursement requests that were approved by Metro for services performed by Consultant, State shall review for approval and make payment to Consultant for eligible costs. Said payment shall be within forty-five (45) days of receipt by State of the Project invoices and shall not exceed a maximum amount of \$467,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed in accordance with the current rules of the State of Oregon Department of Administrative Services.
5. State shall, upon execution of the agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$47,961 for payment of Agency's estimated match requirement, as described above under Terms of Agreement, paragraph 5. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
6. Upon completion of the Project, State shall either send to Agency a bill for the amount which, when added to Agency's advance deposit, will equal 100 percent of the total state costs for Project or State will refund to Agency any portion of said advance deposit which is in excess of the total State costs for Project.
7. State has no monetary obligation under this Agreement other than in its role as a "pass-through Agency" to distribute CMAQ funds for the Project outlined in Exhibit A.
6. State will enter into a personal services contract directly with Consultant and State will ensure the contract outlines the Consultant's responsibilities with regards to the Agency so that Agency can perform its obligations under this Agreement, and it will include language that the Agency will manage and direct the Consultant's work in accordance with this Agreement.
7. State will ensure that the Consultant contract states that the Consultant will submit invoices and required supportive documentation regarding specific tasks and the progress on said tasks as shown in Exhibit A (i.e. monthly progress statement) for 100 percent of actual eligible costs incurred by Consultant on behalf of the Project directly to the Agency, Metro, and State. Invoices and required supportive documentation shall be presented for a period of not less than one (1) month duration, based on actual eligible expenses incurred. Invoices shall display one hundred (100) percent of total eligible expenses incurred during the period of the invoice, and identify any matching amounts if applicable. Invoices shall also display a categorical breakdown of costs, such as personnel costs (salary and benefits), other direct charges, and indirect charges that are appropriate for this Project. Eligible Project expenses are those deemed allowable by OMB Circular A-87.
8. In the event the invoice is not approved, State shall request corrective action be taken and accomplished prior to approval and payment of the invoice. The invoice shall be resubmitted with documentation supporting completion of the corrective action.

9. State's Project Manager for this Agreement is Michele Thom, 123 NW Flanders Street, Portland, OR 97209, (503) 731-8279, michele.r.thom@odot.state.or.us, or assigned designee upon individual's absence. State shall notify Agency's Project Manager in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement 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 State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors, including Consultant, complies with these requirements.
5. As federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency representative.
6. Both Parties shall require their 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 the other Party, 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 acts or omissions of either Party's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the Agency and State, shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Agency or State, be indemnified by the contractor and subcontractor from and against any and all Claims.

7. Any such indemnification shall also provide that neither the 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 anytime 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.
8. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
9. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law,

including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

10. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
11. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
12. Agency, as a recipient of federal funds, pursuant to this Agreement with the 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 the State to return funds to the Federal Highway Administration, hold harmless and indemnify the 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.
13. 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.
14. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

Agency/State
Agreement No. 29237

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #18280) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

CITY OF SHERWOOD, by and through its official

By _____
City Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Counsel

Date _____

STATE OF OREGON, by and through its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
CMAQ Program Coordinator

Date _____

By _____
District 2B Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

AGENCY Contact:

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**EXHIBIT A
STATEMENT OF WORK**

Project 2: Cedar Creek Trail: Roy Rogers Road-Oregon 99W

General Considerations

Abbreviations:

PM: City Project Manager

PMT: Project Management Team, comprised of City staff, ODOT and no more than 3 consultant staff

PAC: Project Advisory Committee (Sherwood Parks Board)

LTAC: Local Trail Advisory Committee (Neighborhood Citizen Advisory Committee)

TAC: Technical Advisory Committee (regional and local jurisdictional staff/active transportation advocates)

PIP: Public Involvement Plan

Project Purpose

This is a local federal aid project to determine the final alignment and prepare the construction documents for the northern segment of the Cedar Creek Trail, SW Roy Rogers Road-Highway 99W. The project will require a detailed analysis of the environmental constraints within the Cedar Creek corridor to help inform the decision-making. The project will involve a public outreach component specific to the neighboring property owners within the corridor as well as providing general information about the alignment to the public through at least two open houses.

Expectations for Written and Graphic Deliverables

Consultant shall prepare project deliverables and circulate them to the Project Management Team (PMT) and committees (LTAC and TAC) members for review and comment. Consultant shall provide a draft of all written deliverables to the Project Manager (PM) for review at least two weeks prior to broader distribution. PM will review the deliverables and submit comments to Consultant within one week. Conflicting comments must be resolved by the PMT. Consultant shall incorporate PM comments into amended deliverables for broader distribution e.g. the public, or the Project Advisory Committee (PAC).

Electronic versions must be in Microsoft Word or an editable format agreed by the PM. Consultant shall prepare and provide maps and graphic deliverables in GIS and PDF format.

Consultant shall develop the trail alignment using GIS and CAD (.dwg). The detailed alignment map must include typical cross sections for the final alignment, any anticipated design exceptions and at locations where standards may need to be modified. Details should include what the trail will look like in various areas, (ie. next to road, mid-block crossings, stream crossings, and next to the vegetated corridor)

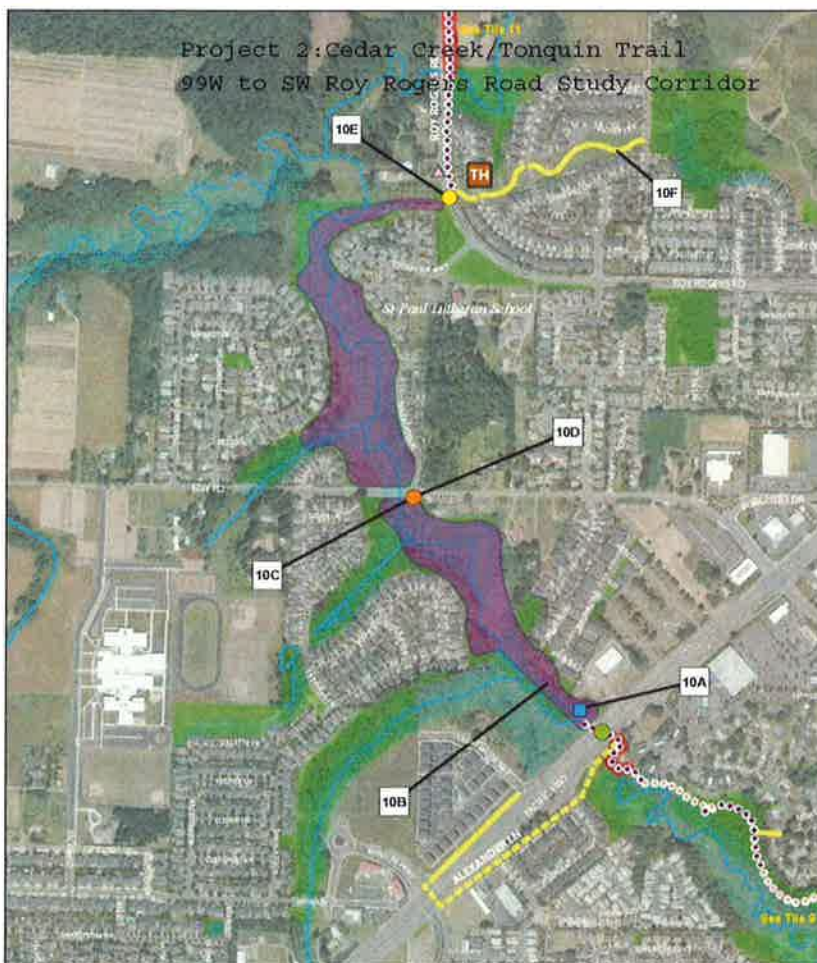
Expectations about Public Involvement

Public involvement must comply with Statewide Planning Goal 1 (Citizen Involvement), which calls for the "opportunity for citizens to be involved in all phases of the planning process." The PM and City shall be responsible for a bulk of the Citizen Involvement component.

The City has formed the Local Trail Advisory Committee; (LTAC). This committee is comprised of neighbors and stakeholders within Sherwood who are interested in the project. The LTAC will provide recommendations to the Parks Board(PAC) on the alignment, especially north of 99W, and address some trail design elements like safety, parking, and other trail amenities.

PMT will finalize an approve content for outreach materials, print, and mail or otherwise distribute as needed materials, including postcards, newsletters, newsfeeds, and power point presentations. Specific information is listed under the appropriate task. Other outreach will include meetings, LTAC meetings, and web updates.

Project Area



SCOPE OF WORK

SCOPE OF WORK OUTLINE

- Task 0-Refine Scope/Contract (Pre-Contract Activity)
- Task 1-Project Management
- Task 2-Public Involvement
- Task 3-Prepare Base Maps and Existing Conditions
- Task 4-Review Collected Data and Provide Two Alignment Options
- Task 5-Develop and Revise Selected Option
- Task 6- Develop Construction Documents for Project based on Selected Option

SCHEDULE	
Key Deliverables and Project Milestones	Months from Notice to Proceed
1. Kick Off Project	1
2. Public Involvement Plan	1
3. Base Maps and Existing Conditions	3
4. Summary Report of Two Alignment Options	5
5. Report and Map of Selected Option	7
6. 30 % Construction Documents of Selected Option	9

Task 0-Refine Scope/Contract

Facilitate Project kick-off meeting, discuss desired project outcomes, and clarify scope of work. Review project time-line, milestones and deliverables. Discuss the roles of the agency and consultants. Establish lines of communication and decision-making and internal review processes. Review preliminary work and data collected by City of Sherwood, including maps, reports, contact information, and past plans and studies.

Task 0.0 Deliverables:

- a. Scoping Meeting with Appropriate Parties
- b. Written Meeting Summary outlining agreements/understandings reach submitted to the PM Team for Review and Approval
- c. Scope of Work and Contract signed and approved by ODOT upon written NTP

Task 1: Project Management

Consultant shall review the project process, technical review and interagency coordination necessary for successful development of the project. Consultant shall coordinate roles and responsibilities between PMT, agencies, consultant team and the various advisory committees established by the PMT. Review and revise as need existing project organizational structure as developed by City.

PM Responsibilities

- Selection of PMT consisting of key PM staff to help oversee project strategy, management and manage deliverable reviews
- Select a PAC consisting of Sherwood Parks Board members
- Select a LTAC consisting of local residents and property owners

- Select a TAC consisting of regional and local agency staff and advocacy organization members
- Review project invoices and supporting documentation and approve all deliverables
- Schedule PMT, LTAC, TAC and PAC, arrange venues, provide notice, equipment and participate in all meetings

Consultant Tasks:

1.1 General Project Administration-consult with PM on schedule, supervise and coordinate project work with consultant staff; maintain project files and records; and monitor work tasks, budgets, and schedules

- Invoicing: prepare and submit monthly electronic invoices to PM and ODOT
- Biweekly Reports: Produce reports that document expenditures and task percent of completion
- Maintain project file for all documentation, written and electronic

Task 1.1 Deliverables

- Electronic monthly invoices by the 20th of each month to PM and Metro for duration of project
- Electronic bi-weekly budget progress reports to PM for duration of project
- Project files and records maintained and delivered to PM within thirty days of any written request
- Prepare detailed project schedule within two (2) weeks of Notice to Proceed (NTP) using MS Project software.

1.2 Project Meetings- conduct and or participate in all project meetings as listed below. In general, consultant shall coordinate with PM to schedule, provide agendas, review goals, produce materials, summary notes, and facilitation services for up to 10 PMT meetings, 4 PAC, LTAC, and TAC meetings. PM is responsible for logistics. The Kick-Off meeting is the first meeting. One start up meeting with the committees will be conducted after the Kick-Off meeting. The remaining meetings will coincide with the key project deliverables.

1.2.1 Project Kick -Off Meeting: Key purpose includes an introduction to the project, goals and objectives, discussion of the schedule, scope, tasks and deliverables, identify contacts and line of communication, and internal review process.

Task 1.2.1 Deliverables

- Plan Kick-off meeting within one month from NTP
- Meeting Agendas-within 5 days of meeting
- Meeting Records-within 5 days after meeting
- Meeting guidelines

1.2.2 Project Management Team (PMT) Meetings- consultant PM shall chair monthly meetings. The Consultant PM and at least one other consultant team member shall attend.

Task 1.2.1 Deliverables

- Meeting Agendas-within 5 days of meeting
- Meeting Records- within 5 days after meeting

1.2.3 Project Advisory Committee Meetings-PM shall attend the PAC meetings and prepare all necessary materials.

Task 1.2.3 Deliverables

- Meeting Agendas-within 5 days of meeting
- Meeting Records- within 5 days after meeting

1.2.4 LTAC and TAC Committee Meetings-PM shall attend the LTAC and TAC meetings and prepare all necessary materials.

Task 1.2.4 Deliverables

- Meeting Agendas-within 5 days of meeting
- Meeting Records- within 5 days after meeting

Task 2.0 Public Involvement

Consultant shall review City public involvement plan to engage the local community, committees and stakeholders to help advance the project and provide information at critical milestones throughout the project.

PM Responsibilities

- Finalize and approve content for outreach materials, web site, print materials, and mail or otherwise distribute (as needed) materials, including postcards, newsletters, newsfeeds, power points, and web-based public surveys (Task 2.1).
- Create and maintain a database and mailing list of stakeholder contact information that includes direct stakeholders, and key property owners and tenants adjacent to the Trail Corridor
- Provide coordination between the LTAC, TAC and PAC
- Provide and maintain project web site
- Provide consultant with Draft Public Involvement Plan

Consultant Tasks:

2.1 Public Involvement Plan (PIP) Consultant shall finalize one (1) final public involvement plan that includes strategies and desired outcomes for engaging key stakeholders and the general public in the project. The PIP is used to guide all aspects of public and stakeholder involvement, roles and responsibilities, planned outreach events and deliverables, and outreach approaches and materials. The PIP must be reviewed and approved by PM and must include:

- Strategies and processes for measuring the success of outreach activities.
- Initial recommendations for the type, frequency, location, format, and targeted audiences for outreach events (see Task 2.3).
- Recommendations for media engagement strategies, including identification of relevant social media, newspaper, and other outlets, and deadlines for submission to same, as well as

recommendations for appropriate outreach display materials, including large format informational displays referred to under Task 2.2.

- Provide a process for amending the PIP, particularly relating to the type, frequency, locations and audiences for outreach events, subject to the initial Existing Conditions findings, stakeholder interview outcomes, and land ownership findings.

Task 2.1 Deliverables

- Final PIP (electronic format) incorporating all review comments within ten (10) days of receipt of review comments.

2.2 Outreach Materials and Media. Consultant shall prepare a range of public involvement materials as listed below, primarily for use at events concurrent with or immediately following three (3) project milestones: upon conclusion of the Existing Conditions task, upon conclusion of the two alignment options, and development of the final trail alignment. These materials may be amended at least once, at the conclusion of the draft Plan sub-task and, if needed, at the second milestone described above. Materials and media may include, but are not limited to:

- Draft content for one (1) project informational postcard, one (1) newsletter article, one (1) newsfeed release, one (1) power point presentation, and one (1) public web-based survey.
- Project website content
- One (1) set of large format informational displays, as defined by the PIP.

Task 2.2 Deliverables

- Contribute web site content. Actual web site will be provided by PM
- Draft content for public outreach materials, including one (1) set of large format informational displays as defined by the accepted PIP.
- One (1) set of up to three (3) large format Project maps for display at outreach events.

2.3 Outreach Events. Events shall be held at the three milestones: Event #1 (after existing conditions) Event #2 (after Two Options Developed) will be held as a stand-alone public open house. Event #3 (after draft plan) will be held as stand-alone event or in conjunction with a community event. Consultant staff members shall attend open house Event #2. Final number of public event dates and locations will be jointly determined by consultant and PM. Note: Consultant is not responsible for any outreach event logistical expenses or costs such as public notices, equipment rental, venue rental, or refreshments.

Subject to the accepted PIP, outreach events must be held in conjunction with the following Project milestones:

- Conclusion of Existing Conditions.
- Conclusion of Two Alignment Options.
- Completion of the Final Alignment Approval.

Subject to the accepted PIP, outreach events associated with Milestone 2 are approximately two (2) hours in length and consist of presentations on Project outcomes and findings and a facilitated Q&A

session, followed by participant interaction in an “open house” setting. At least one (1) but no more than two (2) senior or specialist public involvement Consultant team members shall participate in open house outreach events. PM and collaborative agencies will present and participate in all outreach events.

Task 2.3 Deliverables

- Outreach events, as identified above and in the approved PIP. Note: content, format, number and timing of outreach events may vary based on the accepted final PIP.

Task 3: Land Surveying

Consultant shall provide land surveying services necessary to prepare a base map and digital terrain model (DTM). The base map and DTM will be used to identify up to two Design Option Alternatives.

Control Network – The horizontal datum shall be based on the Oregon State Plane Coordinate System (NAD 83/98). The vertical control shall be NAVD 88. Consultant shall establish Global Positioning System (GPS) control for the horizontal position of up to five (5) control points and run levels over all control points to provide for the topographic survey. All coordinates will be provided in International Feet (SI) and elevations will be provided in U.S. Feet.

PM Responsibilities

- City to provide access to City owned property

Consultant Task

3.1 Topographic Survey Base Map – Consultant shall provide topographic information on all general features within 200-foot wide corridor of up to two proposed trail alternative alignments. The topographical information will be used to prepare a Project base map for developing the alternative alignments. The base map shall include land ownership, topography, utility easements and utilities, existing trail, sidewalk and street locations. The base map will also be used to identify environmental and permitting requirements within the Project corridor. This is expected to include mapping of existing wetlands, floodplain, dominant vegetation, and related boundaries.

The text and blocks in the base map shall be scaled for plotting at a scale of 1" = 50'. The base map shall include:

- Calculations to locate the existing lot lines and easements for up to five parcels the trail crosses.
- Locations of structures, man-made and natural features; such as fence lines, curbs, edge of pavements, signs.
- Location of significant trees and type (6" in diameter or greater).
- Locations of water, gas mains and other utilities in the vicinity of the property.
- Location, size, depth, and direction of flow of sanitary sewers, combination sewers, storm drains and culverts serving or on property.
- Location of catch basins and manholes and inverts of pipe at each.
- Visible utility lines and facilities showing inverts and rim elevation, as available.
- Existing ground shots, including any grade breaks, as required to define the existing ground surface.

- Delineated wetlands.

Consultant shall use surveyed elevations to develop a Digital Terrain Model (DTM) for contour generation and design use, in Microstation and Inroads XM.

Consultant shall request that existing utilities in the Project corridor be marked through the Oregon Utility Notification Center's One-Call System. Utility record maps shall also be requested. Consultant shall survey marks and accessible utility structures, then map the utilities from the field information and record information. This information shall be used to coordinate this Project with utility companies under Task 3.3.

Task 3.1 Deliverables

- Topographic survey and base mapping

Assumptions:

Base mapping will be at a scale as requested with an associated terrain model sufficient to define contours at 1.0 foot interval contours to a typical accuracy of plus or minus one-half contour interval. No potholing of underground utilities will be performed.

Deliverables and Schedule:

Title reports within three weeks of NTP.

Easement memorandum to be submitted with the title reports.

Task 4. Data Collection and Analysis of Constraints and Opportunities

Consultant shall collect relevant data, analyze the data and prepare memoranda that summarize the constraints and opportunities related to each activity. The related activities for data collection and analysis are identified in each of the following subtasks.

Consultant Task

4.1 Hydraulic Analysis – Consultant shall provide a reconnaissance level hydraulic investigation for the Project. The purpose of the investigation is to provide a concise understanding of: the flooding conditions within the project area; the regulatory requirements associated with development within the floodplain; the need for bank/bed stabilization; and the need for stormwater detention/treatment.

Consultant shall conduct a review of available information necessary for conducting the work. This information should include aerial photos, flood photos, topography maps, hydrologic models, hydraulic models, FEMA flood insurance studies, and local floodplain stormwater ordinances. The contractor shall review available information related to flooding conditions in the vicinity of the project site.

Consultant shall conduct a site inspection/investigation. Observations shall be recorded for the following:

- Lateral channel stability- note any signs of stream migration that could affect stability for hydraulic structures (bridges or culverts)

- Degradation (headcutting) or aggradation (deposits) in the channel. Document conditions with color photographs.
- Manning's "n" value for the main channel and overbank areas. Document with color photographs.
- Determine size of existing riprap; note any riprap failure.
- Determine bed material size by visual inspection as required for values for variables in scour prediction.
- Note evidence of scour.
- Hydraulic controls from channel constrictions, dams, etc.
- Apparent or observed high water marks.
- Evidence of debris.
- Conversations with local residents, and/or City/County/CWS about flooding.

Observation of existing stream and floodplain crossings within the developed portions of the trail located north of the project site will be made to help understand the type and magnitude of impacts that may occur as a result of the proposed project.

Task 4.1 Deliverables

- Preliminary report documenting the methods, data, assumptions, and results of the reconnaissance level hydraulic investigation effort will be prepared. Produce and deliver to the Contract Administrator three (3) hardcopies and one electronic copy of the Draft Report within one month after the alternative alignments have been developed.
- Three (3) hardcopies and one electronic copy of the Final Report shall be delivered within five business days after review comments have been received on the draft report.

4.2 Wetland Reconnaissance and Environmental Compliance Assessment – Consultant shall review published references and perform a field inspection in order to identify the approximate location and extent of wetlands, water features, and ordinary high water marks of all potentially regulated wetlands and water features within the project area. Based on the preliminary mapping of these wetlands and waters, consultant will identify the likely extent of "Vegetated Corridors" as defined and regulated by Clean Water Services (CWS) and "Impact Areas" as defined and regulated by the City of Hillsboro Significant Natural Resources Overlay.

Consultant shall provide recommendations for avoiding and minimizing impacts to wetlands and vegetated corridors and estimate unavoidable project impacts to these resources based on the preferred alignment. For unavoidable impacts, Consultant shall identify permitting requirements and mitigation strategies in light of current local, state, and federal regulations. Consultant shall first consider on-site mitigation. If opportunities for on-site mitigation appear marginal, Consultant shall identify the need to consider off-site mitigation and the approximate credit needed to offset project impacts. This task excludes the identification or assessment of off-site mitigation sites, and mitigation design.

Task 4.2 Deliverables

- Wetland Reconnaissance Memoranda
- Environmental Compliance Assessment Memoranda

4.3. Utility Coordination – Identify all utilities and utility easements in the project limits, their locations and issues related to trail alignment and construction. Contact public utilities to request as-built drawings of their facility. Determine any constraints or impacts of the project on utilities, and any adjustments, mitigation or guidelines for compliance. Identify preliminary issues and costs associated with utility easements.

Task 4.3 Deliverable:

- Preliminary utility memoranda

4.4 Historic and Archaeological Investigations – Identify archaeological, cultural, or historical resources that may be located in the study area. Funding will be with federal Congestion Mitigation Air Quality (CMAQ) funds provided under the Metropolitan Transportation Improvement Program (MTIP). A reconnaissance-level cultural resources study will be done to determine the extent of additional fieldwork and research that may be needed to meet the federal standards under Section 106 of the National Historic Preservation Act. The proposed study will provide recommendations for additional work needed to meet state laws protecting significant archaeological sites (ORS 358.910) and significant buildings and structures that are publicly owned (ORS 358.653). The work will be directly supervised or performed by Consultant’s staff meeting the Secretary of Interior’s Professional Qualifications Standards in Archaeology and Historic Preservation. Due to the federal funding, the Agency will review the technical reports.

Archaeological Reconnaissance-Level Study – A literature review and records search will verify information regarding previous sites that have been identified and inventories that may have been conducted within the project area. This task will include gathering information at the State Historic Preservation Office (SHPO), reviewing reports for studies done nearby, and inspecting historic-period maps and documents such as General Land Office maps of the area.

A reconnaissance-level field inspection of the project Area of Potential Effect (APE) will be conducted to determine the level of formal survey work needed to meet federal and state requirements for the protection of significant archaeological sites. The creek raises the possibility for the presence of prehistoric cultural resources along the stream banks and in adjacent areas. A summary of the results of the records search and field inspection will be prepared in the form of a technical report that will provide recommendations for tasks or studies needed to meet federal and state compliance requirements for the protection of significant archaeological resources.

Historic Resource Reconnaissance-Level Assessment – Reconnaissance-level research of the proposed project area will be conducted to determine if previously recorded historic resources are present within the area of potential effect. A field inspection of the project area will be conducted to determine if any historic resources are within the project APE that are over 45 years in age that will need to be documented and evaluated. Consultant shall provide a preliminary evaluation of up to two historic resources.

The results of the field visit and a review of existing historical documents, historic maps and photographs, tax assessor's files, and local library and museum sources will be prepared in the form of a technical report with a summary of the results of the research and recommendations for any formal documentation and assessment of historic resources identified within the APE. The summary report will identify any additional steps needed to meet federal and state compliance requirements for the protection of significant historic resources.

Task 4.4 Deliverables:

- Summary report of historic resource reconnaissance level assessment.

4.5 Level 1 Hazardous Material Assessment – Consultant understands that a Design Options Analysis will be completed to select an alignment of the trail. The assessment is intended to identify potential sources of contamination that could impact the Project, and assist with the recognition of hazardous materials, if they exist, that could significantly affect alignment options for the trail. Based on this information, Consultant shall complete the following subtasks:

Site Visit (Reconnaissance) and Historic Research – A qualified environmental professional will conduct a reconnaissance of the Project Corridor to observe the corridor and any structures located on the corridor to the extent not obstructed by bodies of water, adjacent buildings, or other obstacles. The periphery of the corridor, and all structures on the corridor, will be observed on site and from adjacent public property.

The Project Corridor will be inspected for obvious visual signs of contamination or other environmental problems. Adjacent parcels will be viewed and existing uses will be reviewed for potential environmental impacts. Color photographs will be used to document the condition of the Project Corridor at the time of the inspection. Color copies of selected photographs will be included in the report.

Consultant shall attempt to identify the obvious uses of the Project Corridor from the present, to at least 1940. Consultant shall review one or more of the following standard historical sources, when the records are reasonably ascertainable: aerial photographs, fire insurance maps, property tax files, recorded land title records, United States Geologic Survey (USGS) topographic maps, city directories, building department records, zoning/land use records, or other historical sources.

Consultant shall review reasonable ascertainable recorded land title records and lien records filed under federal, state, local, tribal law to identify environmental liens or activity use limitations (AULs) imposed by judicial authorities.

Records Research and Review - Regulatory searches shall be conducted for the Project Corridor, which will include a review of publicly available environmental records obtained from the EPA and Oregon Department of Environment Quality (ODEQ). The following federal, state, and tribal lists will be reviewed: National Priorities List (NPL), Comprehensive Environmental Recovery, Compensation, and Liability Information System (CERCLIS), Resource Conservation and Recovery Act (RCRA) Transport, Storage, and Disposal (TSD), RCRA generators, Environmental Response Notification

System (ERNS), Underground Storage Tank (UST), leaking UST, Hazardous Materials (HAZMAT), and landfill sites. Listed properties within the minimum search distances specified by E 1527-05 will be identified. Consultant shall review the records and make conclusions based on the data.

In addition, Consultant shall contact the county assessor, environmental health, fire, building, and planning departments for pertinent environmental information pertaining to the Project Corridor. If necessary, Consultant shall review available files at the ODEQ office in Portland for additional records pertaining to the Project Corridor and surrounding properties.

Consultant shall obtain current USGS topographic maps and current aerial photographs (if available) of the Project Corridor. Consultant shall also review published information regarding soils, geology, and hydrogeology of the Project Corridor and region.

Data Analysis and Report – Consultant shall prepare a Level I HMCA report for the Project Corridor that summarizes the findings of the investigations. The report shall include all supporting documentation used to develop conclusions, including photographic documentation. Recommendations will be provided for further action, if deemed necessary by the data. The report will be signed by a professional qualified according to AASHTO guidelines and will be stamped by an Oregon Registered Geologist.

Task 4.5 Deliverable

- Level I MHCA Report.

4.6. Threatened and Endangered Species Act Documentation – Conduct preliminary investigation of any federally listed or proposed species in the project area. Consultant will review USFWS and NMFS web sites and will submit a site-specific database search from Oregon Natural Heritage Information Center (ORNHIC). Contact ODFW and, if warranted, contact USFWS and NMFS under Section 7 of the Endangered Species Act. Identify potential for a no-effect memo or biological assessment for ESA species.

Task 4.6 Deliverable

- Preliminary report regarding potential occurrence of and impacts to federally listed or proposed threatened and endangered species. Report will summarize whether the project will require a “no-effects” document or a biological assessment.

4.7 Design Two Alignment Options-Consultant shall explore potential trail alignments and develop up to two alignments utilizing information and data collected above. The alignment options will minimize impacts to adjacent residential neighborhoods, sensitive areas, trees and utilities to the greatest extent practicable.

Task 4.7. Deliverable

- Base map of up to two alignment alternatives
- Vertical profiles for up to two alignment alternatives

4.7.1 Consultant shall prepare a Design Options Alternative memorandum that identifies the design criteria and design features including but not limited to, structures (boardwalks, bridge crossings, and retaining walls), bridge foundations, and trail characteristics (curvature, maximum and minimum vertical gradients, and typical section). The memo shall summarize issues and impacts of each alternative, including the following:

- Connections with existing trails and access points
- Environmental impacts
- Ease of implementation
- Aesthetics and trail user experience
- Compatibility with existing plans, adjoining land uses
- Public support
- Cost and funding considerations

Task 4.7.1 Deliverable

- Draft design options alternative memorandum
- Cost Estimate – Summarize the preliminary construction cost estimate of each alignment alternative.

Task 5: Final Trail Alignment

Consultant shall develop the final alignment based on feedback received from the public outreach, LTAC, TAC and PAC. The preferred alignment and various aspects of the trail features shall be presented at the second public meeting under Task 4.7.

Consultant Tasks:

5.1. Alignment Refinement – Design refinements shall be made to the trail geometry as necessary. Representative design elements for various aspects of the trail features shall be developed in collaboration with the City and detailed cost estimates prepared of these features.

Task 5.1 Deliverable-

- Map of the Final Trail Alignment

5.2 Refinement Cost Estimate – Refinement of the cost estimate prepared under Task 4.7 shall be completed by the Consultant on the selected option.

Task 5.2 Deliverable

- Final Cost Estimate based on the selected option

5.3. Preliminary Maintenance Plan-Develop an annual short and long-term maintenance plan on selected trail alignment.

Task 5.3 Deliverable

- Preliminary Maintenance Plan

Task 6: 30 % Construction Documents of Selected Option.

Consultant shall prepare a Project Prospectus following the prospectus format used by the Agency. The three-part prospectus includes the following:

- Part 1: Project request with cost estimate
- Part 2: Project Details
- Part 3: Project Environmental Classification, including region environmental checklists

Task 6.1 Prepare 30 % Construction Documents- Consultant shall use the information gathered under Task 3 and consultations as required with regulatory agencies to ensure that issues specific to the Project are understood and noted in the prospectus.

Upon completion of a draft prospectus, Consultant shall provide a copy to the City and Agency for review and comment. Upon receipt of written comments, Consultant shall prepare a final prospectus for the submittal to the Agency and City. Consultant shall submit the final prospectus in electronic form using Microsoft Office software.

Task 6..1 Deliverable

- Standard three-part ODOT prospectus in draft and final forms.
- Final prospectus

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

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this Contract that Contractor has not:

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

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

DEPARTMENT OFFICIAL CERTIFICATION

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

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

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

Exhibit C
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

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

AGENCY/STATE
Agreement No. 29237

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

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

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

EXCEPTIONS:

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

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

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

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-2710) to which this proposal is being submitted

for assistance in obtaining a copy of those regulations.

6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction

knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

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

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

- Appendix B of 49 CFR Part 29 -

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

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered

transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a

prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without

liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

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

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
 5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
 6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor

may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

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

DBE POLICY STATEMENT

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

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

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

requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

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

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

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

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

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

VII. LOBBYING

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

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

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