

- Yellow highlighted areas include instructions that must be deleted prior to circulating to the other party.
- Blue or gray highlighted areas indicate fields that need information provided or text that is optional. Optional language may be included or revised if it applies or deleted if it does not.
- The 2021-2024 STIP approved projects have not been previously federally obligated and therefore, no federal provisions are required. By the rare occurrence that there may be a previously federally obligated project, the Statewide Investments Management Section and DOJ will provide appropriate language for inclusion into this template.

**LOCAL AGENCY AGREEMENT
State Funded Local Project**

Project Name **(If this is a bridge project, include the bridge number)**
Key Number:

THIS AGREEMENT ("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" or "ODOT;" and _____, acting by and through its _____, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, ODOT may enter into cooperative agreements with counties, cities, and units of local government for the performance of any or all lawful functions and activities that ODOT has the authority to perform, including the construction, reconstruction, improvement repair, or maintenance of roads, highways, or streets.
2. _____ is a part of the **(Choose one of the following.)** city street system or county road system under the jurisdiction and control of Agency.

(Include the following recital 3 if this is a State Funded Local Project (SFLP) (exchanging federal dollars for state dollars). Otherwise delete.)

3. Agency wishes to exchange federal funds for state funds, in order to fund the Project using state funding. State has determined that Agency is eligible to receive state funds for the Project through the State Funded Local Project Program. The Parties enter into this Agreement to exchange these funds, identify the Project that will be funded with the state funds, and set out reimbursement terms, including invoicing requirements and the proportional reimbursement rate.

(Include the following recital 3 if this is a state funded project as a result of HB 2017. Otherwise delete.)

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3. This Project was approved for funding by the Oregon Legislature in House Bill 2017, 71d (2017). The funds available under the House Bill 2017 Local Projects Program are State Highway Funds.

If applicable:

4. By the authority granted in ORS [810.080](#). State has the authority to establish marked pedestrian crosswalks on its highway facilities.

If a traffic control device is a part of the Project, add:

5. By the authority granted in ORS [810.200-.210](#), State is authorized to determine the character or type of traffic control devices to be used in the State of Oregon, and each road authority shall place, control, and maintain traffic control devices upon its own highways at places where the road authority deems necessary for the safe and expeditious control of traffic; to carry out the provisions of the vehicle code or local traffic ordinances; or to regulate, warn, or guide traffic. If the Project involves placement of a traffic control device on a State highway or State right of way, no traffic control device shall be erected, maintained, or operated by any authority other than State, except with State's written approval. Notwithstanding the foregoing, all traffic control devices on this Project must conform to the current State standards and specifications established under ORS 810.200.

The Parties therefore agree as follows:

TERMS OF AGREEMENT

1. State and Agency agree to Agency delivering **(insert Project Name)** hereinafter referred to as "Project." The Project includes **(insert Project elements and Phases (i.e. PE/ROW/Construction))**. The Project location and approximate limits are shown in "Exhibit A," attached hereto and by this reference made a part hereof.

(Include the following TOA 2 and 3 if this is a State Funded Local Project (exchanging federal dollars for state dollars). Otherwise delete.)

2. The total Project cost for the work to be performed under this Agreement is estimated at \$ [REDACTED], which is subject to change. Prior to exchanging funds, the federal share of the total Project cost is \$ [REDACTED].
 - a. Per the 1:1 fund exchange ratio of state dollars to federal dollars, Agency exchanges \$ [REDACTED] of the federal dollars allocated for this Project for \$ [REDACTED] in state dollars.
 - b. State funds under this Agreement are limited to \$ [REDACTED].
3. Upon receipt and approval of Agency's invoice(s), State shall proportionately reimburse to Agency **89.73% (for local bridge projects) 90% (for ARTS projects)** of eligible, actual costs incurred in carrying out the Project, up to the maximum amount

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of state funds committed for the Project in Paragraph 2.b above.

(Include the following TOA 2 and 3 if this is a HB2017 project. Otherwise delete.)

2. The Total Project Cost is estimated at \$ [REDACTED], which is subject to change. State funds for this Project shall be limited to \$ [REDACTED]. "Total Project Cost" means the estimated cost to complete the entire Project, and includes any state funds and local funds.
3. Reserved.
4. Agency is solely responsible for any and all costs incurred in excess of the state funds identified in this Agreement. Any unspent state funds will be retained by State and will not be available for Agency use. State funds transferred to Agency must be used for the Project. State will not reimburse Agency for expenses incurred prior to execution of this Agreement and State's issuance of a notice to proceed to Agency.
5. State will reimburse to Agency only eligible costs in compliance with Agency Obligations, paragraph 5 and which comply with the requirements of Article IX, Section 3a of the Oregon Constitution, as determined by State.

(Include the following TOA 6 if this is a SFLP (exchanging federal dollars for state dollars). Otherwise delete.)

6. The term of this Agreement will begin upon the date all required signatures are obtained (Effective Date) and will terminate upon completion of the Project and final payment or [five (5) calendar years] (may change term to longer if the locals give valid reasons for needing longer (e.g. bridge projects), consult with ODOT PM) following the Effective Date, whichever is sooner. The Project must be completed and Agency must invoice State no later than [insert a date that is earlier than the term of years above]. If the Project is not timely completed and invoiced pursuant to this paragraph, any funds paid to Agency under this Agreement must be returned to ODOT within ten (10) calendar days of State's request to return the funds.

(Include the following TOA 6 if this is a state funded project as a result of HB 2017. Otherwise delete.)

6. The term of this Agreement will begin upon the date all required signatures are obtained (Effective Date) and will terminate upon completion of the Project and final payment or [insert number] calendar years following the Effective Date, whichever is sooner.

AGENCY OBLIGATIONS

1. Agency shall perform the work described in TERMS OF AGREEMENT, Paragraph 1 of this Agreement.
2. **Americans with Disabilities Act Compliance:**

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Choose the appropriate ADA paragraph from the most current document found at the following link entitled "Updated ADA Matrix"

(DOJ and Mike Kimlinger, State Traffic Roadway Engineer, must review any changes to the approved ADA language.)

[\(\\scdata2\crew0953shar\Master_Agreement_Formats\Master_Agreements\Sample Paragraphs\ADA\)](#)

3. Except as otherwise provided in Agency Obligations Paragraph 2 above, Agency agrees that the Project shall be developed in conformance with the American Association of State Highway and Transportation Officials (AASHTO) standards, including the current edition of A Policy on Geometric Design of Highways and Streets and ODOT's Highway Design Manual, when the Project is on a locally owned segment of the National Highway System (NHS) or a state owned NHS segment. Agency may use ODOT approved design standards or AASHTO standards when work is off the NHS and entirely on Agency's system.
4. Agency shall comply with all federal and state permitting requirements for this Project.
5. Eligible Costs for Reimbursement. Agency may seek reimbursement for its eligible costs consistent with the terms of this Agreement.
 - a. Eligible Costs are Agency's actual Project costs that are:
 - i. Reasonable, necessary and directly incurred in the development of the Project,
 - ii. Documented in accordance with generally accepted accounting principles established by the Governmental Accounting Standards Board, and
 - iii. Eligible or allowed uses of funds under the Oregon Constitution, the statutes and administrative rules of the state of Oregon, and this Agreement.
 - b. Eligible Costs may include Indirect Cost Allocation Plan (ICAP) rates that have been approved by a Cognizant Agency or State Agency. When an approved ICAP does not exist, Agency may request an indirect rate of 10% de minimus or 0%.
 - c. State, in its sole discretion, determines whether a particular cost satisfies the criteria set forth in this Paragraph 5 and is an Eligible Cost.
6. Agency shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of State. State's consent to any subcontract (or other delegation of duties) does not relieve Agency of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the Parties, and, except as otherwise provided their permitted legal successors and assigns.

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7. Agency shall obtain a permit to occupy State right of way through the ODOT District Permitting Office prior to the commencement of construction.

Include the following paragraph if traffic signal or illumination is part of the project:

8. If the Project includes traffic signal or illumination improvements on or along a state highway, Agency shall:
 - a. Obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal or illumination, pursuant to Oregon Administrative Rule (OAR) 734-020-0430,
 - b. Enter into a separate traffic signal agreement with State to cover obligations for any traffic signal or illumination being installed on or along a state highway,
 - c. Ensure Agency, or its contractor's, electrical inspectors possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on State highways. The State District Permitting Office shall verify compliance with this requirement prior to construction. The permit fee should also cover the State electrician's supplemental inspection,
 - d. Maintain, at the Agency's expense, the pavement surrounding any vehicle detector loops installed in the Agency street in such a manner as to provide adequate protection for said detector loops. Failure to do so may result in State requiring Agency to repair or replace the damaged loops at Agency expense. Future Agency roadwork activities involving detector loops may also result in the same State requirements. Agency shall also adequately maintain the pavement markings and signing installed in accordance with the approved signal plan sheets for the signal installation or current Manual on Uniform Traffic Control Devices standards,
 - e. Promptly report modifications to State's Region Traffic Engineer where Agency has an agreement with State to modify signal timing and the Agency modifies timing to add railroad or emergency vehicle preemption, bus priority, or other changes that affect vehicle or pedestrian clearances, or operation of the state highway. Any such timing modification shall comply with the ADA and Agency Obligations Paragraph 2; and
 - f. Ensure that all Project work and maintenance activities involving pedestrian-activated signals comply with the ADA and Agency Obligations Paragraph 2.
9. ***For Local Bridge Projects Only: (Be sure to send the Agreement to Bert Hartman and Holly Winston, as the Bridge Technical Reviewers.)***
 - a. The Parties agree that bridge design shall meet AASHTO Load Resistance Factor Design (LRFD) Bridge Design Specifications (current version), AASHTO Guide Specifications for LRFD Seismic Bridge Design, and ODOT Load Resistance Factor Rating (LRFR), Tier 2 Load rating.

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- b. Agency must electronically submit the following information to ODOT. This information must be received within ninety (90) days of the issuance of Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Agency's equivalent.
 - i. Bridge As-Constructed Drawings;
 - ii. Structural Analysis Information (if applicable);
 - iii. Foundation Report;
 - iv. Hydraulic Report including Scour Analysis.
 - v. Pile Records and drill logs (if applicable); and
 - vi. Final Load Rating calculation with a stamped report and all files.
- c. Electronic files must be:
 - i. Emailed to Senior Local Bridge Standards Engineer at Holly.M.Winston@odot.state.or.us) and to bridge@odot.state.or.us
 - ii. In MicroStation or Adobe (PDF) format;
 - iii. Submitted via MOVEit DMZ located at:
<https://www.oregon.gov/ODOT/Pages/Move-It.aspx>
 - iv. Each bridge should be in a separate MOVEit folder using the bridge numbers shown in this Agreement;
 - v. On 11 inch x 17 inch PDF plan sheets stamped and signed as-constructed markups, containing final construction notes; and
 - vi. Follow the file naming convention required in the Bridge Design and Drafting Manual located at:
<https://www.oregon.gov/ODOT/Bridge/Pages/Bridge-Design-Manual.aspx>
- d. Agency shall notify State's Local Agency Bridge Inspection Engineer (Richard.J.King@odot.state.or.us) and bridge@odot.state.or.us to ensure the initial inspection is scheduled.
- e. Agency shall conduct an inspection with State's Project Manager and State's Region Senior Structural Designer or State's Senior Local Bridge Standards Engineer.
- f. Project Change Request (PCR) Process:
 - i. Agency must obtain approval from State for changes to the Project scope or budget by submitting a PCR. Agency is responsible for all costs attributable to changes to the established Project scope or budget made prior to an approved PCR. No work may be performed under the PCR until an amendment to this Agreement is executed by both Parties, and a subsequent Notice to Proceed (NTP) is issued by State.

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- ii. Agency must submit all Project Change Requests using PCR Form 734-2851 which is incorporated by this reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A PCR may be rejected at the discretion of State.
 - iii. The fillable PCR form and its instructions are available at the following web site: <http://www.oregon.gov/ODOT/Forms/2ODOT/7342851.doc>
9. **For All Roads Transportation Safety (ARTS) Projects Only:** Agency must obtain approval from the State's Region Traffic Manager for changes to the Project's scope or budget by submitting a written request (email is acceptable) to the State's Project Manager. Agency is responsible for any cost increases due to changes to the established Project scope or budget made prior to State's approval. The Parties shall execute an amendment to this Agreement to memorialize any approved changes referenced in this paragraph.
10. Agency shall present invoices for the Eligible Costs incurred by Agency on behalf of the Project directly to State's Project Manager listed in this Agreement for review and approval. Such invoices shall be in a form identifying the Project, Key Number, the Agreement number, the Project phase and amount charged to each phase (such as preliminary engineering, right of way, and construction), the invoice number, and will itemize all expenses for which reimbursement is claimed. Agency shall submit invoices to State no less than monthly but not greater than quarterly, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project. Agency shall also include with the invoice a Project progress report or summary that describes work accomplished for the period being invoiced and work expected for the next invoicing period. Agency's travel expenses will not be reimbursed.
11. Agency, or its contractor(s), shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.

(If Agency intends to transfer the acquired right of way to ODOT or if federal funds were previously obligated, include the blue language below.)

12. Agency agrees that right of way activities shall be performed in accordance with the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970** and ORS Chapter 35. Agency shall ensure that its contractor(s) complies with these requirements.

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13. 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 279C.505, 279C.515, 279C.520, 279C.530 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, as amended; (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.
14. Agency shall perform the services 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.
15. 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 subcontractors complies with these requirements.
16. Agency shall, at its own expense, maintain, operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand, beginning upon Project completion and continuing throughout the useful life of the Project. State and Agency agree that the useful life of this Project is defined as **75 (for local bridge projects) 20 (for roadway)** years. Maintenance and power responsibilities shall survive termination of this Agreement.
17. Agency shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed or damaged, Agency agrees to pay insurance proceeds to ODOT in an amount adequate to reimburse ODOT for all state funds expended by ODOT for the portion of the Project that was destroyed or damaged, unless ODOT has agreed in writing that such insurance proceeds may be used by Agency to rebuild the Project.
18. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:
 - a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.

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- b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of the Agency or other road authority, whether that permission is express or implied, and whether written or oral.

19. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of the current budget. Agency further agrees that it will only submit invoices to State for reimbursement on work that has been performed and paid for by Agency as described in this Agreement.

20. If Agency enters into a contract for performance of work under this Agreement, Agency agrees to comply with the following:

a. Contracts:

- i. All contracts must be in writing, executed by Agency, and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the contract. Use of a contract does not relieve Agency of its responsibilities under this Agreement.
- ii. Agency shall require all of its contractors performing work under this Agreement to name State as a third-party beneficiary of the resulting contract with the contractor and to name State as an additional or "dual" obligee on contractor's payment and performance bonds.
- iii. Agency shall provide State with a copy of any signed contract upon request by State. This paragraph [20.a.iii](#) shall survive expiration or termination of this Agreement.
- iv. Agency must report to State any material breach of a term or condition of a contract within ten (10) days of Agency discovering the breach.

b. Contract Indemnification:

- i. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, Agency shall require each of its contractors 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, the Oregon Transportation Commission, and the Oregon Department of Transportation and their respective officers, members, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever (hereinafter, referred to individually and collectively as "Claims") to the extent such Claims result from, arise out of, or relate to the activities or omissions of Agency's contractor, subcontractor(s), or their respective officers, employees, or agents under the resulting contract or otherwise related to the project.

- ii. Any such indemnification shall also provide that Agency's contractor shall ensure that neither Agency's contractor(s) or its subcontractor(s) nor any attorney engaged by any Agency contractor or subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that any Agency contractor or subcontractor is prohibited from defending the State of Oregon, or that any Agency contractor or subcontractor 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(s) and subcontractor(s) if the State of Oregon elects to assume its own defense.
- c. Contract Insurance:
- i. Agency shall require the other party or parties to each of its contracts, that are not units of local government as defined in ORS 190.003, to meet the minimum insurance requirements provided in Exhibit B, attached hereto and by this reference made a part hereof. Agency may specify insurance requirements for its contractor(s) above the minimum insurance requirements specified in Exhibit B. Agency shall verify its contractor(s) meet the insurance requirements in Exhibit B.
 - ii. Agency shall determine insurance requirements and insurance types and amounts as deemed appropriate based on the risk of the work outlined within the contract. Agency shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Agency shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the contract.
 - iii. Agency shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risk of the subcontracted work.
- d. Agency shall include provisions in each of its contracts requiring its contractors to comply with the indemnification and insurance requirements in subparagraphs b and c of this Agency Obligations Paragraph 20.
21. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, 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 during the course of the Project and for a period of six (6) years after final payment. Copies of

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applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State. This section shall survive any expiration or termination of this Agreement.

22. 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.
23. Agency's Project Manager for this Agreement is (insert title, address phone number and e-mail address), 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.

STATE OBLIGATIONS

1. In consideration for the services performed under this Agreement, State shall reimburse Agency 89.73% (for local bridge projects) 92.22% (for ARTS projects) of Eligible Costs incurred in carrying out the Project up to the maximum amount of state funds committed for the Project in Terms of Agreement, Paragraph 2 of this Agreement. Reimbursements shall be made by State within forty-five (45) days of State's approval and acceptance of a request for reimbursement from Agency, except that State will withhold final payment until State's Project Manager has completed final project review and Project acceptance.
2. State shall provide the following items to Agency's Project Manager no later than 30 days after execution of this Agreement:
 - a. Scoping Notes; and
 - b. Any other project-specific information gathered during the scoping and selection process.
3. Upon notification from Agency's Project Manager of Project completion, State's Project Manager will arrange for a final project review to confirm project completeness and fulfillment of Agreement obligations, prior to final payment.
4. If Project includes traffic signal improvements on or along a State Highway, traffic signal timing shall be the responsibility of State, unless there is an agreement that specifically allows Agency to perform that function. State shall:
 - a. Ensure its Region Electrical Crew, at Project expense, perform the signal equipment environmental testing and perform the signal field testing and turn on,
 - b. Retain the right of review of the traffic signal timing for signals on state highways, or those which State maintains, and shall reserve the right to request adjustments when needed,

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- c. Notify the local jurisdiction whenever timing changes that affect the operation of local street connections to the state highway are scheduled. All modifications shall follow guidelines set forth in the current Manual on Uniform Traffic Control Devices, and the current ODOT State Traffic Signal Policy and Guidelines,
 - d. Upon completion of the Project, maintain the pavement surrounding the vehicle detector loops installed in the State highway in such a manner as to provide adequate protection for said detector loops, at State's expense, and
 - e. Maintain the pavement markings and signing installed on the State highway in accordance with current ODOT standards.
5. State's Project Manager for this Agreement is (insert name, title, address phone number and e-mail address), 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.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual consent of both Parties.
2. State may terminate this Agreement upon 30 calendar days' prior written notice to Agency.
3. 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.
4. If State terminates this Agreement for the reasons described in General Provisions 3(a) or (b) above, Agency must reimburse State for all state funds expended. If Agency

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fails to reimburse State, State may withhold Agency's proportional share of State Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.

5. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
6. 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.
7. 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.
8. 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

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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.

9. 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.
10. State and Agency are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
11. The State of Oregon's payment obligations under this Agreement are conditioned upon ODOT's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. Agency is not entitled to receive payment under this Agreement from any part of Oregon state government other than ODOT. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.
12. 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.
13. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision in this or any other 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 2021-2024 Statewide Transportation Improvement Program (STIP), (Key # [REDACTED]) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

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, by and through its elected officials

STATE OF OREGON, by and through
its Department of Transportation

By _____

Name _____
(print)

Date _____

By _____

Name _____
(print)

Date _____

**LEGAL REVIEW APPROVAL (If required
in Agency's process)**

By _____
Agency Counsel

Date _____

Agency Contact:

Name/Title
Address
Phone
Email

State Contact:

Name/Title
Address
Phone
Email

By _____

Deputy Delivery and Operations Division
Administrator **(for bridge projects)**
Region Manager **(for all other projects)**

Name _____
(print)

Date _____

APPROVAL RECOMMENDED

By _____
Region Manager

Date _____

***(Include the following signature if a
traffic signal, marked crosswalk, or
other traffic control device is being
installed or improved on a state
highway, as defined in ODOT's Traffic
Manual, Chapter 5. Send to Scott
Cramer as a Technical Reviewer.)***

By _____
State Traffic Roadway Engineer

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General (If Over
\$150,000)

Date _____

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EXHIBIT A – Project Location Map

EXHIBIT B

Contract Insurance Requirements

Agreement Coordinators should work with ODOT's Agreement Project Manager to complete the required information in this Exhibit. ODOT's Agreement Project Manager will work with the Local Agency Agreement Project Manager related to insurance limits listed in this Exhibit.

An Insurance Risk Assessment must be completed in order to identify the appropriate insurance types and amounts for each Agreement.

The Insurance Risk Assessment applicable to these Agreements is the DAS Risk Management Goods and Trade Services Insurance Risk Assessment located here:
<https://www.oregon.gov/das/Risk/Pages/CntrctrlnsReq.aspx>

1. GENERAL.

- a. Agency shall require, in its contracts with entities that are not units of local government as defined in ORS 190.003 (if any), that its contractors: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the contract commences, and ii) maintain the insurance in full force throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Agency shall not authorize work to begin under the contract until the insurance is in full force. Thereafter, Agency shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Agency shall incorporate appropriate provisions in the contract permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Agency permit work under a contract when Agency is aware that the contractor is not in compliance with the insurance requirements. All references to "contractor" in this Exhibit B refer to Agency's contractor as identified in this Paragraph 1.a
- b. The insurance specified below is a minimum requirement that the Agency shall require its contractor to meet, and shall include such requirement in Agency's contract with its contractor. Agency may determine insurance types and amounts in excess of the minimum requirement as deemed appropriate based on the risks of the work outlined within the contract.
- c. Agency shall require each of its contractors to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing services related to the Contract.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including Agency's contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

b. PROFESSIONAL LIABILITY.

A&E and Related Services: Professional liability insurance is required for A&E design services and A&E Related Services, except that professional liability coverage may be waived by Agency for low-risk related services, such as public involvement or outreach.

General:

Professional liability insurance must cover damages caused by negligent acts, errors or omissions of contractor and contractor's subcontractors, agents, officers or employees related to the professional services to be provided under the contract.

Coverage shall be written with a per claim, incident or occurrence limit, or the equivalent, of not less than \$1,000,000 \$2,000,000 \$5,000,000.

Annual aggregate limits shall not be less than \$2,000,000 \$4,000,000 \$10,000,000.

If this insurance is provided on a "claims made" basis, Contractor shall maintain continuous claims made liability coverage or shall acquire tail coverage to continue the same coverage for a duration of at least **2 years**, unless **3 years** or **5 years** is specified, after completion of the contract or for the foregoing extended period beyond contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the contract.

c. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by State:

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Coverage shall be written on an occurrence basis in an amount of not less than
 \$1,000,000 \$2,000,000 \$5,000,000 per occurrence.

Annual aggregate limit shall not be less than \$2,000,000 \$4,000,000
 \$10,000,000.

d. AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property damage. Amount below is a minimum requirement as determined by State:

Coverage shall be written with a combined single limit of not less than **\$1,000,000.**

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

e. EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

f. ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must endorse the "**State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees**" as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations.

Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Agency.

g. "TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the contract, for a minimum of twenty-four (24) months following the later of: (i) the contractor's completion and Agency's acceptance of all Services required under the contract or, (ii) the expiration of all warranty periods provided under the contract. Notwithstanding the foregoing twenty-four (24) month

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requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and State may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If State approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

3. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). **The Agency shall immediately notify State of any change in insurance coverage.**

4. CERTIFICATE(S) OF INSURANCE.

Agency shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the contract. The certificate(s) or an attached endorsement must endorse: i) **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers' Compensation.