

LOCAL AGENCY AGREEMENT
State Funded Local Project Program
Project Name

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

RECITALS

1. Agency wishes to exchange unspent federal funds previously allocated to the Project for state funds, in order to fund the Project using state funding. State has determined that Agency is eligible for state funds for the work to be performed under this Agreement 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 describe the method State will use to reimburse Agency for work performed on the Project using the state funds, including establishing invoicing requirements and the proportional reimbursement rate.
2. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities, and 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. _____ is a part of the (city street system or county road system) _____ under the jurisdiction and control of Agency.
4. (Insert Recital discussing status of prior agreement, if applicable. Include information regarding status of the work under the prior agreement, funds expended, and status of any payments)

If applicable:

5. 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:

6. By the authority granted in ORS [810.210](#), State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. All traffic control devices on this Project must conform to the current State standards and specifications.

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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 to Agency (Insert work to be performed on the Project), hereinafter referred to as "Project." The Project location and approximate limits are shown on the map marked "Exhibit A," attached hereto and by this reference made a part hereof.
2. The total Project cost for the work to be performed under this Agreement is estimated at \$ _____, which is subject to change. Prior to exchanging funds, the federal share of the total Project cost is
 - a. Per the 1:1 fund exchange ratio of state dollars to federal dollars, Agency will exchange _____ of federal dollars allocated for this Project for _____ of state dollars.
 - b. State funds under this Agreement are limited to \$ _____.
3. Upon receipt and approval of Agency's invoice(s), State shall proportionately reimburse Agency ____ (##) percent of eligible, actual costs incurred in carrying out the Project, up to the maximum amount of state funds committed for the Project.
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.
5. To be eligible for reimbursement, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution. Eligible costs are defined as reasonable and necessary costs incurred by the Agency in performance of the Project.
6. The term of this Agreement will begin upon the date all required signatures are obtained and will terminate upon completion of the Project and final payment or ten (10) calendar years following the date of final execution, whichever is sooner.

AGENCY OBLIGATIONS

1. Agency shall perform the work described in TERMS OF AGREEMENT, Paragraph 1 of this Agreement.

Design and construction of a project IS on or along State Highway System (regardless of funding) or ODOT owns the contract, use the language in paragraph 2 below.

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Agreement Writers: If the project includes any of the following, list them in this provision in addition to sidewalks, curb ramps, and PA signals:

- shared use path,
- transit stop,
- park-and-ride,
- on-street parking

Be sure to also update this language where it appears in the other ADA paragraphs below.

2. Americans with Disabilities Act Compliance:

- a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
 - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan *(Temporary Pedestrian Accessible Route Plan applies whenever ODOT has a work zone up)* and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForm s1.aspx>; and
 - iv. **OMIT THIS SUBSECTION IF ODOT OWNS THE CONTRACT** Promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.

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- b. [INSERT NAME OF PARTY DOING THE WORK] shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. [INSERT NAME OF PARTY DOING THE WORK] shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.

Add paragraph #c below if Agency will maintain any portion of project:

- c. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
- i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.

If work will be done on a Local Agency Road or facility use the following paragraph 3:

3. Except as otherwise provided in Agency Obligations Paragraph 2 above, Agency agrees that the Project shall be developed in conformance with the applicable American Association of State Highway and Transportation Officials (AASHTO) standards, including the current edition of A Policy on Geometric Design of Highways and Streets.

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If federal funds were used for any phase of the Project, the following paragraphs 4 and 5 may need to be included, depending on the answers to the questions outlined in the comment bubbles to the right:

4. Agency shall follow the Buy America statute under Title 23, United States Code, Section 313. Such provision shall be included as part of the construction contract.
5. Agency shall comply with all terms of federal National Environmental Policy Act (NEPA) and other federal permit provisions required for this Project.
6. Agency shall obtain a permit to occupy State right of way through the State District Office prior to the commencement of construction.
7. If Project includes traffic signal or illumination improvements on or along a state highway, Agency shall:
 - a. Obtain a miscellaneous permit to occupy State right of way through the State District Office prior to the commencement of construction.
 - b. Pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway.
 - c. Enter into a separate traffic signal agreement with State to cover obligations for any traffic signal or illumination being installed on a state highway.
 - d. 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.
 - e. Upon completion of the Project and at its own expense, maintain 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 the 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.
 - f. Ensure that all Project work and maintenance activities involving pedestrian-activated signals comply with the ADA and Agency Obligations Paragraph 2.

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8. Agency shall submit all of the following items to State's Project Manager, at Project completion and prior to final payment:
 - a. Final Project completion Inspection form No. 734-5063 (completed with State's Project Manager);
 - b. Final Cost;
 - c. As-Constructed Drawings

Include if Local Bridge Project (regardless of funding source)

- d. Structural Analysis Information (if applicable);
- e. Foundation Report;
- f. Hydraulic Report including Scour Analysis.
- g. Pile Records and drill logs (if applicable);
- h. Final Load Rating calculation with a stamped report with a CD containing all electronic files to the State's Senior Local Bridge Standards Engineer;
- i. Notify State's Local Agency Bridge Inspection Coordinator at Richard.J.King@odot.state.or.us, and bridge@odot.state.or.us to ensure the initial inspection will be scheduled; and
- j. Inspection with State's Project Manager under this Agreement, State's Region Senior Structural Designer, or State's Senior Local Bridge Standards Engineer.

Include Paragraphs 9 and 10 below if a Local Bridge Project (regardless of funding source)

9. Agency shall submit, prior to final payment, required bridge plans, reports, and documentation to State's Project Manager and Senior Local Bridge Standards Engineer, using an electronic files package: MicroStation file and PDF file output that shows all red-line as-constructed markups of plan sheets (and additional files listed below, if applicable to the Project). Agency shall follow the file naming convention required in the Bridge Design and Drafting Manual located at: http://www.oregon.gov/ODOT/HWY/BRIDGE/Pages/standards_manuals.aspx#Bridge_Design_&_Drafting_Manual.
 - a. In the "AsConstructedPlans" folder on State's FTP directory (available at the following link): <ftp://ftp.odot.state.or.us/AsConstructedPlans/>, Agency shall create a subfolder under the "Bridge" folder using the bridge numbers shown in this Agreement for each bridge for the subfolder name. Agency shall place the PDF files in these folders, including:
 - b. **11 inch x 17 inch PDF plan sheets** stamped and signed - as-constructed markups, containing final construction notes.
 - c. Agency shall also place copies in same FTP folder of the following reports/records identified in Agency Obligations, paragraph 7 of this Agreement.

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- d. Agency shall send email notification to State's Project Manager and Senior Local Bridge Standards Engineer Holly.M.WINSTON@odot.state.or.us and to the bridge@odot.state.or.us mailbox after placing files on FTP site (include link to applicable FTP subfolder in email).

10. **Project Change Request (PCR) Process** - Agency must obtain approval from State's Bridge STIP Coordinator and State's Bridge Engineer for changes to the Project's scope, schedule, or budget by submitting a PCR, as specified in Paragraphs 10 a-f, below. Agency shall be fully responsible for all costs attributable to changes to the established Project scope, schedule or budget made prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

- a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project Description in Terms of Agreement, paragraph 1.
- b. **Schedule** - A PCR is required if Agency or State's Contact anticipates that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
- c. **Budget** - The Project's estimated budget is used for determining the level of compensation for completed work. Increases or decreases in the budget which require a STIP amendment also require the submission of a PCR to the State's Regional Local Agency Liaison.
- d. PCR requests that result in Project cost increases that are equal to or less than twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is less, can be approved by the State Bridge Engineer. Such amendments can be approved and entered into by the State Bridge Engineer, subject to any applicable State approvals.
- e. PCR requests that result in a Project cost increase in excess of twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is greater, must be approved by the State Bridge Engineer and the Local Agency Bridge Selection Committee with a majority vote. Such amendments must be executed by the same officials who executed the original Agreement, and are subject to any applicable State approvals.
- f. **PCR Form** - Agency must submit all change requests using PCR Form 734-2851 attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A PCR may be rejected at the discretion of State's Bridge Engineer.

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The fillable PCR form and its instructions are available at the following web site:
<http://www.oregon.gov/ODOT/Forms/2ODOT/2851.doc>

Include Paragraph 11 below if an All Roads Transportation Safety (ARTS) project

11. Agency must obtain approval from the Region Traffic Manager for changes to the Project's scope, schedule, or budget by submitting a request through State's project liaison or manager by written notification, e-mail is acceptable. Agency shall be fully responsible for cost increases due to changes to the established Project scope, schedule, or budget made prior to approval. The Parties shall execute an amendment to this Agreement to memorialize any approved changes referenced in this paragraph.
12. Agency shall present invoices for the eligible, actual 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 (such as preliminary engineering, right of way, and construction), the invoice number, and will itemize all expenses for which reimbursement is claimed. Invoices shall be presented for periods greater than one month, 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. Travel expenses will not be reimbursed.
13. Agency, or its consultant, 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.
14. Agency or its consultant shall acquire all necessary right of way in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual.
15. 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; (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.

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16. 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.
17. 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.
18. 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 and throughout the useful life of the Project. State and Agency agree that the useful life of this Project is defined as _____ years. Maintenance and power responsibilities shall survive any termination of the Project Agreement.
19. 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.
 - 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 expressed or implied, and whether written or oral.
20. 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 they will only submit invoices to State for reimbursement on work that has been performed and paid for by Agency as described in this Agreement.
21. 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, Oregon 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 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific

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intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of the State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.

22. 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.
23. If Agency enters into a construction contract for performance of work for the Project, then Agency will include provisions in that contract requiring its contractor to comply with the following:
- a. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
 - b. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$1,000,000 \$2,000,000 \$5,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$1,000,000 \$2,000,000 \$4,000,000 10,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles.

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This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.

- e. Additional Insured Endorsement. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under the resulting contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of the resulting contract and shall be grounds for immediate termination of the resulting contract and this Agreement.
24. 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 applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
25. 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.
26. 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 [redacted] (##) percent 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 of a request for reimbursement from Agency, except that final payment will be withheld until the State's Project Manager has completed final project inspection and project acceptance.

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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. State's Project Manager will arrange for a final project inspection upon notification from Agency of Project completion, 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. Consistent with Agency Obligations Paragraph 2 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,
 - 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 and at State's expense,
 - e. Maintain the pavement markings and signing installed on the State highway in accordance with current ODOT standards, and
 - f. 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, Agency shall promptly report such modifications to State's Region Traffic Engineer. Any such timing modification shall comply with the ADA and Agency Obligations Paragraph 2,
5. State's Project Manager for this Agreement is (insert 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 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.
3. If State terminates this Agreement for the reasons described in General Provisions 2(a) or (b) above, Agency must reimburse State for all state funds expended. If Agency 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.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. 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.

6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or

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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.

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 2018-2021 Statewide Transportation Improvement Program (STIP), (Key #) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently by amendment to the STIP).

Signature Page to Follow

EXHIBIT A – Project Location Map

DRAFT