

OREGON DEPARTMENT OF TRANSPORTATION
Transportation Safety Office Grant Agreement
(State Funded only)

This Transportation Safety Office Grant Agreement ("Agreement") is made by the State of Oregon, acting by and through its Department of Transportation, Transportation Safety Office hereinafter referred to as ODOT or Agency, and [INSERT GRANTEE NAME], hereinafter referred to as Grantee or Subrecipient, and collectively referred to as the Parties (the "Project").

Agreement Terms and Conditions

1. Effective Date. This Agreement is effective on the date that it is fully executed and approved as required by applicable law (the "Effective Date"). Reimbursements will be made for Project Costs incurred on or after July 1, 2022 through and including **June 30, 2023** (the "Grant Period"). No Grant Funds are available for expenditures incurred after the Grant Period.

2. Agreement Documents. This Agreement includes the following documents, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

The Agreement Terms and Conditions set forth herein
Exhibit A- Project Description
Exhibit B - ODOT Grant Budget and Cost Sharing

All of the Exhibits attached hereto are incorporated herein by this reference.

3. Grant Award. In accordance with this Agreement, Agency shall provide Grantee an amount not to exceed **\$[insert award amount]** (the "Grant Funds") for eligible costs of the Project.

4. Project.

a. Description. The Grant Funds shall be used solely for the activities described in Exhibit A (the "Project") and may not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by Agency pursuant to **Section 5c** hereof. Grantee shall implement and complete the Project in accordance with Exhibit A.

b. Project Change Procedures. Any proposed changes in the scope of the Project, the Project objectives, key Project personnel, time period, or Budget must be requested in writing and approved by Agency. Grantee shall not perform any Project changes without a Grant Adjustment Form, submitted in the form provided by ODOT, and signed by Agency and Grantee. Any extension of the time period for completion or performance of the Project must be requested at least six weeks prior to the end of the stated time period and may need approval of the funding agency (identified in

Section 8 of this Agreement) if the end of the grant award year is involved.

c. Conditions of Project Approval. [RESERVED].

5. Grant Funds.

a. Use of Grant Funds. The Grant Funds shall be used solely for the Project activities described in Exhibit A in accord with the ODOT Grant Budget and Cost Sharing set forth in Exhibit B (the "Budget"). Grantee agrees to use its best efforts to fully expend the Grant Funds for their stated purposes within the Grant Period, after which time all unspent award funds are no longer available for the project beyond the end of the Grant Period.

b. Eligible Project Costs. The Grant Funds may be used only for Grantee's actual Project costs to the extent those costs are (a) reasonable, necessary and directly used for the Project; and (b) eligible or permitted uses of the Grant Funds under, as applicable, federal and State law and this Agreement and are (c) not excluded from reimbursement or payment as a result of any later financial review or audit ("Eligible Project Costs"). Eligible Project Costs do not include any expenditures incurred outside of the Grant Period.

c. Reimbursement. ODOT will disburse the Grant Funds only as reimbursement for Eligible Project Costs paid by Grantee and upon receipt and approval of Grantee's Quarterly Reports and Claims for Reimbursement (along with any required supplementary documents like Residual Value Agreement form, receipts indicating proof of purchase, etc.) submitted in accord with Section 6 of this Agreement. Grantee will be reimbursed only for Eligible Project Costs incurred by Grantee after the date set forth in the "Authorization to Proceed" for the Project provided to Grantee by Agency. Grant Funds shall not be used for Project activities previously carried out with the Grantee's own resources with no declared intent to be reimbursed under this Agreement (supplanting). Income earned through services conducted through the Project should be used to offset the cost of the Project and be included in the Budget.

d. Conditions Precedent to Reimbursement. ODOT's obligation to disburse Grant Funds to Grantee is subject to the conditions precedent that:
(i) ODOT has received funding (including federal funds), appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the reimbursement;

(ii) Grantee is in compliance with the terms of this Agreement and no Grantee Default under **Section 13** of this Agreement has occurred or is occurring; and
(iii) ODOT has received and approved the reports and Claims for Reimbursement submitted by Grantee.

e. Availability of Funds. The funds committed under this Agreement are subject to Agency having sufficient funding, appropriations, limitations, allotments and other expenditure authority to make disbursements.

6. Project Reporting and Management. Grantee's Project Director (described below) shall be responsible for implementing this Agreement and establishing and maintaining procedures that will ensure the effective administration of the Project.

a. Project Director Responsibilities. The Project Director shall:

(i) **Accounting.** Establish or use an accounting system that conforms to general accepted accounting principles, as described in **Section 10a** of this Agreement, and ensure that source documents are developed which will reliably account for the Grant Funds expended, any required match provided, and any grant project income.

(ii) **Personnel.** Maintain copies of job descriptions and resumes of persons hired for all Project-related positions which are funded at 0.25 FTE or more.

(iii) **Hours Worked.** Maintain records showing actual hours utilized in Project-related activities by all Grant Funded personnel and by all other staff personnel or volunteers whose time is used as in-kind match.

(iv) **Quarterly Reports.** Complete a quarterly highway safety project report ("Quarterly Report"). Each Quarterly Report must be signed by the Project Director or the Designated Alternate and submitted to Agency by the tenth day of the month following the close of each calendar quarter for the duration of the Grant Period. The "Project Director" is the person responsible for implementing this Agreement and establishing and maintaining procedures that will ensure the effective administration of the project objectives. The "Designated Alternate" is an individual who is given the authority to sign Quarterly Reports for the Project Director, in the event he/she is unable to sign due to circumstances beyond his/her control.

(v) **Reimbursement Claims.** Submit a Claim for Reimbursement within 35 days of the end of the calendar quarter in which expenses were incurred (submit claims no more than monthly), using the form provided by Agency as follows:

(A) Residual Value Agreement form, and invoices and/or receipts indicating proof of purchase. Copies of ODOT's pre-approval, invoices and/or receipts for all specified items must be submitted to Agency upon request with the Claim for Reimbursement.

(B) Claims for Reimbursement may be submitted as often as monthly but must be submitted at least quarterly; and

(C) Claims for Reimbursement must be signed (or electronically 'signed/approved', if applicable) by the Project Director or the Designated Alternate.

b. Travel. Grantee shall keep a record of all significant travel. Agency will provide reimbursement without pre-approval only for in-state travel by persons employed by Grantee in Project-related activities. All out-of-state or other travel must be pre-approved by Agency. Grantee must adhere to the State's travel policy, such as utilizing Government Services Administration (GSA) travel reimbursement rates. To receive approval or reimbursement, the trip must be detailed on the Budget or requested in a grant adjustment as described under Project Change Procedures. All travel outside the Grantee's jurisdiction should be summarized on the Quarterly Reports.

c. Development of Print or Production Materials.

(i) **Agency Rights.** Grantee *shall* provide Agency with draft copies of all outreach, media, and/or educational materials to be developed using Grant Funds, and prior to production (regardless of medium: print, broadcast, radio, etc.). Agency may suggest revisions and must pre-approve production of any materials developed using Grant Funds. All brochures; course, workshop and conference announcements; and other materials that are developed and/or printed using Grant Funds shall include a statement crediting Agency. Materials produced through the Project shall be provided to Agency for its use and distribution and may not be sold for profit by either the Grantee or any other party. Every invention, discovery, work or authorship, trade secret or other tangible or intangible item that Grantee is required to deliver to Agency under this Agreement and all intellectual property rights therein ("Work Product"), including derivative works and compilations shall be the property of Agency; any original work of authorship created by Grantee under this Agreement is "work made for hire" of which Agency is the author. Grantee hereby irrevocably assigns to Agency any and all rights, title, and interest in all original Work Product created by Grantee under this Agreement. Upon Agency's reasonable request, Grantee shall execute such further documents and instruments necessary to fully vest such rights in Agency. Grantee forever waives any and all rights relating to Work Product created by Grantee under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

(ii) **Grantee Rights.** If the Work Product created by Grantee under this Agreement is a derivative work based on Grantee Intellectual Property, or is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Grantee intellectual property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

(iii) **Third Party Rights.** If the Work Product created by Grantee under this Agreement is third party intellectual property or a derivative work based on third party intellectual property, or is a compilation that includes third party intellectual property, Grantee shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing element of the third party intellectual property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

(iv) **Other State/Federal Rights.** RESERVED.

d. Equipment Purchased with Grant Funds.

(i) **Residual Value Agreement.** If Grant Funds are used in whole or in part to acquire any single item of equipment costing \$5,000 or more (which acquisition is only upon ODOT's pre-approval), Grantee shall complete and submit to Agency an equipment inventory that lists such items and includes Agency's rules governing the removal or release of such items from Grantee's inventory (a "Residual Value Agreement"), in the form provided by Agency. Agency may, at its discretion, require Grantee to execute a Residual Value Agreement for equipment costing less than \$5,000 in order to track the tangible equipment purchased with Grant Funds. A copy of the original vendor's invoice indicating quantity, description, manufacturer's identification number and cost of each item will be attached to the signed agreement. All equipment should be identified with the Grantee's property identification number.

(ii) **Federal Requirements.** Reserved.

e. Costs and Expenses Related to Employment of Individuals; Insurance; Workers' Compensation.

Grantee is 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 withholding. In addition, Grantee's subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017 and shall provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Grantee shall ensure that each of its sub-recipient(s), contractor(s), and subcontractor(s) complies with these requirements.

7. Final Report. Grantee must prepare a Project Director's Final Evaluation Report ("Final Report") in accordance with the Evaluation Plan described in Exhibit A and in the form provided by Agency to Grantee. This report is separate and distinct from the required fourth

Quarterly Report; this Final Report must cover the entire grant year. The Final Report must be submitted within 35 days following the last day of the Grant Period. The report may be no more than ten pages and must include the following elements:

a. Objective and Activities. A summary of the Project including problems addressed, objectives, major activities and accomplishments as they relate to the objectives.

b. Costs. A summary of the costs of the Project including the amount of Grant Funds and amounts paid by Grantee, other agencies and private sources. The amount of volunteer time should be identified;

c. Implementation. Discussion of implementation process so that other agencies implementing similar projects can learn from Grantee's experiences; including descriptions of what went as planned, what didn't work as expected, what important elements made the Project successful or as successful as expected;

d. Evaluation. Respond to each of the evaluation questions set forth in Exhibit A, including completing and referencing the Data Table (as applicable);

e. Completed Data Table. Complete the Data Table (as applicable) by inserting the information in the format required in Exhibit A.

8. Recovery of Grant Funds.

a. Recovery of Grant Funds. Any Grant Funds disbursed to Grantee under this Agreement that are expended in violation of one or more of the provisions of this Agreement, including any Grant Funds used for ineligible or unauthorized expenditures as determined by a state or federal review for which Grant Funds have been claimed and payment received, ("Misexpended Funds") must be returned to Agency. Grantee shall return all Misexpended Funds to Agency no later than fifteen (15) days after ODOT's written demand.

b. Audit. RESERVED.

9. General Representation and Warranties of

Grantee. Grantee represents and warrants to ODOT as follows:

a. Organization and Authority. Grantee is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Grantee has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Grantee of this Agreement:

(i) have been duly authorized by all necessary action of Grantee;

(ii) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Grantee's, as applicable, governing laws or Articles of Incorporation or Bylaws, (iii) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected, and (iv) no further authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

b. Binding Obligation. This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee, enforceable in accordance with its terms subject to, if applicable, the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. No Gratuities. Grantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

The warranties set in this **Section 9** are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

10. Records Maintenance and Retention.

a. Records, Access to Records and Facilities.

Grantee shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with, as applicable, all generally accepted accounting principles, generally accepted governmental auditing standards, and minimum standards for audits of non-profit organizations. Grantee shall ensure that each of its sub-recipients and subcontractors, if any, complies with these requirements. Agency, the Secretary of State of Oregon (Secretary), the federal government (including the Federal Funding Agency or the Comptroller General of the United States), and their duly authorized representatives shall have access to the books, documents, papers and records of Grantee that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations and may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Nothing herein is

meant to be or will be interpreted to be a waiver of any protection against disclosure of records or communication otherwise provided by law, including protection provided by attorney-client privilege or the attorney work product doctrine.

b. Retention of Records. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project (including all records required under 49 CFR Part 18.42) until the date that is the later of: (i) any date required under 49 CFR Part 18.42 or (ii) six (6) years following the expiration of the Grant Period.

c. Expenditure Records. Grantee shall document the expenditure of all Grant Funds reimbursed by ODOT under this Agreement. Grantee shall create and maintain all expenditure records in sufficient detail to permit Agency to verify how the Grant Funds were expended. This Section 10 shall survive any expiration or termination of this Agreement.

11. Sub-agreements.

a. Subcontractors. Performance of this Agreement shall not be subcontracted in whole or in part, except with the written consent of Agency. If applicable, Grantee shall not assign this Agreement or the Project described herein, either in whole or in part, or otherwise attempt to convey any right, privilege, duty or obligation hereunder, without the prior written consent of Agency.

b. Terms of Subcontracts. Any contracts or other service agreements that are entered into by the Grantee as part of the Project shall be reviewed and approved by Agency to determine whether the work to be accomplished is consistent with the objectives and funding criteria of the Project. Grantee shall ensure that any subcontractors adhere to applicable requirements established for the Grant Funds and that any subcontracts include provisions for the following: (i) Administrative, contractual, or legal remedies in instances where subcontractors violate or breach sub contract terms, and provide for such sanctions and penalties as may be appropriate; (ii) Access by the Grantee, the state, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the contractor which are directly pertinent to that specific subcontract, for the purpose of making audit, examination, excerpts, and transcriptions. Subcontractors shall maintain all required records for six years after Grantee makes final payments and all other pending matters are closed; (iii) Notice of Agency's requirements and regulations pertaining to reporting, requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such subcontract, and requirements and regulations pertaining to copyrights and rights in data; and

(iv)) Additional Requirements: RESERVED.

c. Conditional Terms. RESERVED.

d. Subcontractor Indemnity/Insurance.

(i) **Indemnity.** Grantee's subcontract(s) shall require the other party to such subcontract(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon ("State") 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 the other party to Grantee's subcontract or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the other party to Grantee's subcontract(s) from and against any and all Claims. Any such indemnification shall also provide that neither Grantee's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subgrantees"), nor any attorney engaged by Grantee's Subgrantee(s), shall defend any claim in the name of the State 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 may, at any time at its election, assume its own defense and settlement in the event that it determines that Grantee's Subgrantee is prohibited from defending State or that Grantee's Subgrantee is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Grantee's Subgrantee if the State elects to assume its own defense.

(ii) **Insurance.** Grantee may require the other party, or parties, to each of its subcontracts that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided for projects of the Project's nature. Any insurance obtained by the other party to Grantee's subagreements, if any, shall not relieve Grantee of the requirements of Section 11 of this Agreement. The other party to any subcontract with Grantee, if the other party employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in **Section 6**.

12. Termination

a. Termination by Agency. Agency may terminate this Agreement effective upon delivery of written notice of

termination to Grantee, or at such later date as may be established by Agency in such written notice, if:

(i) Grantee fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Grantee is, for any reason, rendered improbable, impossible, or illegal;

(ii) Agency fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or

(iii) Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or

(iv) The Project would not produce results commensurate with the further expenditure of funds; or

(v) Grantee takes any action pertaining to this Agreement without the approval of Agency and which under the provisions of this Agreement would have required the approval of Agency; or

(vi) Grantee is in default under any provision of this Agreement.

b. Termination by Grantee. Grantee may terminate this Agreement effective upon delivery of written notice of termination to Agency, or at such later date as may be established by Grantee in such written notice, if:

(i) The requisite local funding or match, if any, to continue the Project becomes unavailable to Grantee; or

(ii) Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

(iii) Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Grantee is no longer authorized to operate or to carry out the Project.

c. Termination by Either Party. If a Party fails to comply with any of the terms of this Agreement, the other Party may terminate this Agreement upon at least ten days' notice to the other Party or upon failure of the other Party to cure within any cure period provided in the notice.

13. Default.

a. Grantee Default. Any of the following constitutes a default by Grantee under this Agreement:

(i) Any false or misleading representation is made by or on behalf of Grantee or sub-grantee, in this Agreement or in any document provided by Grantee to Agency related to the Grant Funds or the Project;

(ii) Grantee fails to cure any performance as provided in Section 12.c;

(iii) Grantee fails to perform any other obligation required under this Agreement; or

(iv) If and to the extent allowed by law, Grantee initiates or consents to a proceeding or case, or a proceeding or

case is commenced without the application or consent of Grantee, seeking: (A) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (B) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (C) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

b. Agency Default. Agency will be in default under this Agreement if it fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement.

14. Remedies.

a. Agency Remedies. Upon any default, Agency may pursue any or all remedies in this Agreement and any other remedies available at law or in equity to enforce the performance of any obligation of Grantee. Remedies may include, but are not limited to:

- (i) Terminating Agency's commitment and obligations under the Agreement as provided in **Section 12**;
- (ii) Requiring repayment of the Grant Funds and all interest earned by Grantee on those Grant Funds as provided in **Section 8**.

No remedy available to Agency is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

b. Grantee Remedies. In the event Agency defaults on any obligation in this Agreement, Grantee's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of Agency's obligations.

15. General Provisions.

a. Contribution.

- (ii) 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 Agency or Grantee 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.

(iii) With respect to a Third Party Claim for which Agency is jointly liable with Grantee (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 Grantee in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of the Grantee 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 Grantee 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 Agency had sole liability in the proceeding.

(iv) With respect to a Third Party Claim for which Grantee is jointly liable with Agency (or would be if joined in the Third Party Claim), Grantee 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 Grantee 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 Grantee 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. Grantee'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.

b. Dispute Resolution. 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.

c. Amendments. This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

d. Duplicate Payment. Grantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

e. No Third Party Beneficiaries. Agency and Grantee are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

f. Notices. Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same, postage prepaid, to Grantee Project Director or Agency Contact at the address or number set forth below or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against Agency, such facsimile transmission must be confirmed by telephone notice to Agency Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received. Notices shall be directed to:

Grantee – to the name and address listed on page 1 of this Agreement

Attn: Project Director: As listed in application.

ODOT

ODOT Contact:

g. Governing Law, Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and

exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. *Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.*

h. Compliance with Law. Grantee shall comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the Project including, but not limited to, the provisions of ORS 319.020 and OAR 738 Divisions 124 and 125 where applicable by this Agreement, incorporated herein by reference and made a part of this Agreement.

i. Independent Contractor. Grantee shall perform the Project as an independent contractor and not as an agent or employee of Agency. Grantee has no right or authority to incur or create any obligation for or legally bind Agency in any way. Agency cannot and will not control the means or manner by which Grantee performs the Project, except as specifically set forth in this Agreement. Grantee is responsible for determining the appropriate means and manner of performing the Project. Grantee acknowledges and agrees that Grantee is not an "officer", "employee", or "agent" of Agency, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

j. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

k. Counterparts. 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.

l. Integration and Waiver. This Agreement, and the 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 or consent under this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific

purpose given. The failure of Agency to enforce any provision of this Agreement shall not constitute a waiver by Agency of that or any other provision.

The Grantee, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

STATE OF OREGON acting by and through its Department of Transportation

Signature: _____

Transportation Safety Office Manager, ODOT-TSO

Date: _____

Print Name and Title: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Sam Zeigler, Assistant Attorney General

GRANTEE: Project Director:

Signature: _____

Date: _____

Print Name and Title: _____

GRANTEE: Designated Alternate:

Signature: _____

Date: _____

Print Name and Title: _____

GRANTEE: Authorizing Official:

Signature: _____

Date: _____

Print Name and Title: _____

EXHIBIT A

[INSERT PROJECT SUMMARY REPORT AND NEGOTIATED GRANT PROJECT APPLICATION]

**EXHIBIT B
BUDGET AND COST SHARING**

[Insert or attach budget from negotiated Project Application]

