

NEVI GRANT AGREEMENT

This grant agreement ("Agreement") is between the State of Oregon, acting through its Department of Transportation, ("State" or "ODOT"), and [full legal name of the grantee including its address] ("Grantee"), acting by and through its governing body, both referred to individually or collectively as "Party" or "Parties".

RECITALS

1. ODOT is authorized to enter into this agreement under ORS 184.614 and 184.615.
2. The Infrastructure Investment and Jobs Act (IIJA) establishes a National Electric Vehicle Infrastructure (NEVI) formula program to provide funding to states to strategically deploy electrical vehicle (EV) charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliable charging.
3. The purpose of this Agreement is to provide funding to the Grantee to acquire, construct, install, operate, maintain, and own EV charging stations using Federal Highway Administration (FHWA) NEVI funds. The Grantee shall operate and maintain the EV charging stations for 5 years from the date the ODOT issues a Notice to Proceed, pursuant to Exhibit C - Phase 3.
4. In accordance with 2 C.F.R. 170.220(a) and the Federal Funding Accountability and Transparency Act (FFATA), the terms in Appendix A to 2 C.F.R. Part 170 are incorporated by reference into this Agreement.
5. Grantee represents that it is duly qualified and agrees to perform all activities described in Exhibit C to this Agreement (collectively, the "Project") to the satisfaction of the State.

AGREEMENT TERMS

1. Term of Agreement and Survival of Terms.

- 1.1. **Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law (the "Effective Date"). No payments will be made to Grantee before the Effective Date. Grantee can begin work under this Agreement only after both the Effective Date and notification by the State's Authorized Representative to begin the work.
- 1.2. **Expiration Date.** This Agreement expires the earlier of eight (8) years from the Effective Date, or the date that Grantee has completed the Project to the State's satisfaction. If required, the Grantee can request, in writing, a no-cost time extension from the State. The request shall include an explanation for the time delays and need for time extension. The State has the sole discretion to approve or deny any such request.
- 1.3. **Time.** Grantee must comply with all the time requirements described in this Agreement. Time is of the essence. If additional time is required to complete a Phase as defined in the

approved project schedule (see Exhibit C – Scope of Work and Deliverables Task 1.3), the Grantee must submit a request for a time extension, in writing, to ODOT describing why additional time is required. ODOT reserves the right to ask for additional information and approve or deny time extensions at ODOT's discretion.

- 1.4. **Limitation.** Under this Agreement, the State is only responsible for receiving and disbursing funds. Nothing in this Agreement will be construed to make the State a principal, co-principal, partner, or joint venturer with respect to the Project. State may provide technical advice and assistance as requested by the Grantee, however, the Grantee will remain responsible for providing direction to its contractors and consultants and for administering its contracts with such entities. The Grantee's consultants and contractors are not intended to be third party beneficiaries of this Agreement.
- 1.5. **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
- 1.6. **Certification.** By signing this Agreement, the Grantee certifies that it is not suspended or debarred from receiving federal or state awards.
- 1.7. **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 16. Indemnification; 17.4.3 Workers Compensation; 20. State Audits; 21. Publicity and Endorsement; and 26. Governing Law, Jurisdiction, and Venue.
2. **Exhibits.** The following exhibits are made a part hereof and together with this instrument constitute the entire Agreement. This Agreement contains all of the terms and conditions agreed upon by the parties hereto.
 - 2.1. Exhibit A: ODOT Notice of Funding Opportunity
 - 2.2. Exhibit B: Technical Specifications and Requirements for Operation
 - 2.3. Exhibit C: Project Description and Deliverables
 - 2.4. Exhibit D: Grantee Response to NOFO, including Technical Application Form and Cost Proposal Form ("Grantee Response")
 - 2.5. Exhibit E: National Electric Vehicle Infrastructure Standards and Requirements ("NEVI Rule")
 - 2.6. Exhibit F: FHWA Form 1273 ("Form 1273")
 - 2.7. Exhibit G: Standard Title VI/Nondiscrimination Form
 - 2.8. Exhibit H: Project Wage Rates (Davis-Bacon and Oregon Prevailing Wage Rates (BOLI)) Wages as of **DATE – Add before signing Agreement**
 - 2.9. Exhibit I: Reimbursement Request Template ("Grant Progress Report and Reimbursement Request Templates")
 - 2.10. Exhibit J: Buy America Requirements for EV Chargers ("NEVI BABA Rule")

- 2.11. Exhibit K: Design Recommendations for Accessible EV Charging Stations (Accessibility Recommendations)
- 2.12. Exhibit L: Federal Transparency Act Subaward Reporting

3. **Authorized Representatives.**

- 3.1. The State's Authorized Representative is: [name, title, address, telephone number, email], or his/her successor. State's Authorized Representative has the responsibility to monitor Grantee's performance and the authority to accept the Project work provided under this Agreement. If the Project work is satisfactory, the State's Authorized Representative will certify acceptance on each reimbursement request submitted for payment.
- 3.2. Grantee's Authorized Representative is: [name, title, address, telephone number, email]. If Grantee's Authorized Representative changes at any time during this Agreement, Grantee will immediately notify the State in writing.
- 3.3. Grantee acknowledges and agrees that State selected Grantee and is entering into this Agreement because of the special qualifications of Grantee's key team members. State, through this Agreement, is engaging the expertise, experience, and judgment of the key team members as shown in the grant application.
- 3.4. In the event Grantee requests that State approve a reassignment or transfer of the Grantee's Authorized Representative or key team members:
 - Grantee shall provide a resume for the proposed substitute demonstrating that the proposed replacement has qualifications that are equal to or better than the qualifications of the person being replaced.
 - State shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Grantee's Authorized Representative and key team members.
 - Any substitute or replacement for the Grantee's Authorized Representative or key team members must be approved in writing (e-mail acceptable) and shall be deemed to be a key person under the Agreement.
- 3.5. Grantee agrees that the time/costs associated with the transfer of knowledge and information for a key team member replacement is not a cost borne by State and shall not be billed to State. This includes labor hours spent reviewing project documentation, participation in meetings with personnel associated with the Agreement/project, and participating in site visits to become familiar with the project.

4. **Grantee's Duties.** Grantee will:

- 4.1. Perform the duties specified in the Exhibits.
- 4.2. Comply with all requirements and regulations specified in the Exhibits.
- 4.3. Submit required deliverables per Exhibit C. Reimbursement is contingent upon the successful and documented completion of each project phase.
- 4.4. Procure all necessary permits and licenses; pay all charges, fees, and taxes; and give all notices necessary and incident to the due and lawful prosecution of the Agreement.

- 4.5. Be familiar with all laws, ordinances, and regulations that may in any manner affect those engaged or employed upon the work, or materials or equipment used in or upon the work, or that may in any way affect the conduct of the work. Grantee shall conduct the work such that conflict with any such laws, ordinances, or regulations will be avoided, and the Grantee shall save and hold harmless ODOT and its representatives against any claims arising from violation thereof.
 - 4.6. Obtain prior approval of the State for any non-minor changes related to the scope of work. This includes, but is not limited to:
 - 4.6.1. Any non-minor revision of the scope, schedule, goals, objectives, phases, or tasks of the proposal Scope of Work, or related activities (regardless of whether there is an associated budget revision requiring prior approval); and
 - 4.6.2. Changes in key personnel, program manager, or prime contractor.
 - 4.7. Abide by all applicable federal requirements, including but not limited to, applicable requirements of Title 23 United States Code (USC), 2 Code of Federal Regulations (CFR) Part 200, 23 CFR Part 680, FHWA Federal Form 1273, the Davis Bacon Act, the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, the National Environmental Policy Act of 1969 (NEPA), the Uniform Relocation Assistance and Real Property Acquisition Act, Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Drug-Free Workplace requirements under subpart B of 49 C.F.R. Part 32, and the Build America, Buy America Act. In addition to these requirements, the Grantee must comply with all other standards and requirements that may be required by federal, state, and local laws.
 - 4.8. Submit written progress reports at least quarterly, and a final grant closeout report. Quarterly and final closeout reports must be submitted within the timeframes identified in 2 CFR 200.329. Payments will not be made under section 9.4 if a progress report is past due unless Grantee has been given a written extension by the State.
 - 4.9. Maintain separate accounts for this Project in accordance with generally accepted accounting principles. Accounts must be sufficient to permit the preparation of reports required by general and program specific terms and conditions. In addition, accounts must be sufficient to allow for the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the federal statutes, regulations, and the terms and conditions of the federal award.
 - 4.9.1. Grantee shall maintain all records for the Project separately and shall make them available to ODOT for review in a timely manner, if requested.
 - 4.10. Submit data through the Federal Highway Administration online reporting platform (EV-ChART) according to the schedules outlined in 23 CFR 680.112.
- 5. Contracting and Bidding Requirements.**

- 5.1. **Anti-Lobbying.** Grantee shall comply with all Anti-Lobbying requirements outlined in Form 1273, which is attached and incorporated into this Agreement as Exhibit F.
- 5.2. **Debarment and Suspension.** Grantee shall comply with all Debarment and Suspension requirements outlined in Form 1273, which is attached and incorporated into this Agreement as Exhibit F.
- 5.3. **Federal Award Uniform Administrative Requirements.** For all procurements of goods and services supported in whole or in part with federal funds, Grantee agrees to comply with the current requirements and standards of the Uniform Administrative Requirements, 2 CFR part 200, subpart D, which is incorporated by reference into this Agreement.
- 5.4. **Excluded Parties Listing System.** Before entering into a third-party contract or subcontract, Grantee agrees to check the System for Awards Management at <https://www.sam.gov/portal/public/SAM/> to ensure the selected vendor or contractor has not been excluded from doing business with the federal government or its grantees. Grantee will provide State with evidence that the System for Awards Management website has been checked.
- 5.5. **Fund Use Prohibited.** The Grantee will not utilize any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering or receiving a State or Federal contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment or material supplier. This restriction does not prevent the Grantee from utilizing these funds to pay any party who might be disqualified or debarred after the Grantee's contract award on this Project.
- 5.6. **Procurement of Recovered Materials.** Grantee will comply with 2 CFR 200.323 Procurement of Recovered Materials, as applicable.
6. **Asset Monitoring.** Grantee is required to use the capital asset(s) obtained under this Agreement for the NEVI formula program for five years. Any capital assets acquired with grant funds under this Agreement are subject to the reporting requirements under 23 CFR 680.112(c)(3). Grantee may not sell or change the purpose of use for the capital asset(s) obtained with grant funds under this Agreement without the prior written consent of the State and an agreement executed and approved by the same parties who executed and approved this Agreement, or their successors in office. If disposition of asset(s) obtained under this Agreement is approved, any proceeds from the sale of such asset(s) must follow the requirements under 2 CFR 200.311, 2 CFR 200.313, and 2 CFR 200.314, or as specifically identified in federal law or the terms and conditions of the award.
7. **Federal Funds Compliance and Full Financial Responsibility.** Payments under this Agreement will be made from federal funds. The Grantee is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Grantee's failure to comply with federal requirements. If, for any

reason, the federal government fails to pay part of the cost or expense incurred by the Grantee, or in the event the total amount of federal funds is not available, the Grantee will be responsible for any and all costs or expenses incurred under this Agreement. The Grantee further agrees to pay any and all lawful claims arising out of or incidental to the performance of the work covered by this Agreement in the event the federal government does not pay the same.

8. Consideration

- 8.1. **Total Obligation.** The total obligation of the State for all capital reimbursements to Grantee under this Agreement will not exceed \$[] ("Total Obligation"). The Total Obligation of the State for all O&M reimbursements to Grantee under this Agreement will not exceed \$[]. The Total Obligation of the State for all compensation and reimbursements to Grantee under this Agreement will not exceed a federal participation rate of 80%. Grantee is responsible for the remaining 20%. See Exhibit D for site specific project cost caps.
- 8.2. **Consideration.** The State will pay for all Project work performed by Grantee during the period of performance under this Agreement as follows:
 - 8.2.1. **Compensation.** Grantee will be reimbursed for actual eligible costs incurred. Costs incurred must be consistent with the Project budget and work plan in Exhibit C and Exhibit D.
 - 8.2.2. **Expenses and scope not included in original project budget or work plan.** Changes in the scope of work in Exhibit C ("scope changes") and/or total Project costs in Exhibit D ("cost changes") must be approved in writing prior to Grantee incurring costs related to scope or cost changes. Changes to the overall budget will not be approved, but ODOT may, in its discretion, approve cost changes between cost items within the Capital Costs and within the Operations and Maintenance (O&M) category. ODOT will not reimburse Grantee for scope or costs changes incurred prior to receiving ODOT's written approval.
 - 8.2.3. **Eligible Costs.** Grantees shall be reimbursed for eligible costs as shown in Exhibit D and that are deemed eligible according to 23 CFR 680 and federal, state, and local laws.
 - 8.2.4. **Ineligible Costs.** Grantee shall not be reimbursed for costs incurred prior to the Effective Date, costs deemed ineligible per 23 CFR 680 or other federal, state, or local laws; costs that exceed the Total Obligation; or costs incurred for work that does not meet the requirements of this Agreement at the sole discretion of ODOT.
 - 8.2.5. **Indirect Cost.** As required by 2 CFR 200.332 (b), Grantee may elect to use a rate derived from a current cost allocation plan approved by ODOT or another cognizant agency; or may elect to use a de minimis rate up to 15% Modified Total Direct Cost (MTDC) as described in 2 CFR 200.414.

- 8.3. **Program Income.** For the purposes of program income or revenue earned from the operation of an EV charging station, all revenues received from operation of the EV charging facility shall only be used for:
- 8.3.1. Debt service with respect to the EV charging station project, including funding of reasonable reserves and debt service on refinancing;
 - 8.3.2. A reasonable return on investment of any private person financing the EV charging station project, as determined by the State;
 - 8.3.3. Any costs necessary for the improvement and proper operation and maintenance of the EV charging station, including reconstruction, resurfacing, restoration, and rehabilitation;
 - 8.3.4. If the EV charging station is subject to a public-private partnership agreement, payments that the party holding the right to the revenues owes to the other party under the public-private partnership agreement; and
 - 8.3.5. Any other purpose for which federal funds may be obligated under Title 23 USC.
- 8.4. **Payment.**
- 8.4.1. **Reimbursement Request.** Grantee will submit a reimbursement request for payment upon the successful and documented completion of the corresponding project phase using Exhibit I. Grantee shall submit a separate Reimbursement Request for each location. Each Reimbursement Request must include the start and end date of the billing period, itemize all expenses for which reimbursement is claimed. Grantee must pay its contractors, consultants, and vendors before submitting a Reimbursement Request to ODOT for reimbursement and must provide evidence of such payment. The State's Authorized Representative will review each reimbursement request against the cost proposal, grant expenditures to-date, and the latest written progress report before approving payment. The State will pay Grantee after Grantee presents an itemized reimbursement request for the Project work actually performed and the State's Authorized Representative accepts the Project work performed.
 - 8.4.2. **Payment schedule.** Grantee may begin incurring eligible Project costs no earlier than the Effective Date. Reimbursement will be made on a milestone basis. Upon completion of each project phase identified in Exhibit C, Grantee shall submit a reimbursement request together with all required documentation demonstrating successful completion of that phase or task. ODOT will review the submission to verify compliance and documentation before approving payment, in accordance with State payment requirements.
 - 8.4.3. **Data Submittal Requirement.** During the life of the Project, Grantee shall submit reports as required by Exhibit C. Applicable reports must be submitted through the online reporting platform provided by the Federal Highway Administration (EV-

ChART). Data submittals will be reviewed and approved by the State's Authorized Representative before processing reimbursement requests.

8.4.4. **All Reimbursement Requests Subject to Audit.** All reimbursement requests are subject to audit, at State's discretion. Audits will be conducted using the cost principles and procedures set forth in 2 CFR part 200.

8.4.5. **State's Payment Requirements.** State will pay all valid obligations under this Agreement within 45 days after receiving Grantee's invoices and progress reports for the Project work performed. If a reimbursement request is incorrect, defective or otherwise improper, State will notify Grantee within ten days of discovering the error. After State receives the corrected reimbursement request, State will pay Grantee within 45 days of receipt of such request.

8.4.6. **Prompt Payment.** Grantee shall reimburse all contractors within 10 calendar days upon acceptance of an approved invoice.

8.5. **Monitoring Visit and Financial Reconciliation.** The State may make at least one monitoring visit and conduct annual financial reconciliations of Grantee's expenditures during the period of performance.

8.5.1. The State's Authorized Representative will notify Grantee's Authorized Representative where and when any monitoring visit and financial reconciliation will take place, which State employees and/or contractors will participate, and which Grantee staff members should be present. Grantee will be provided with at least seven calendar days of notice prior to any monitoring visit or financial reconciliation.

8.5.2. Following a monitoring visit or financial reconciliation, Grantee will take timely and appropriate action on all deficiencies identified by State.

8.5.3. At least one monitoring visit and one financial reconciliation must be completed prior to final payment being made to Grantee.

8.6. **Unexpended Funds.** The Grantee must promptly return to the State at grant closeout any unexpended funds that have not been accounted for in a financial report submitted to the State. Any funds that remain at the end of the Project shall revert to ODOT's NEVI Formula Funding Program.

8.7. **Repayment of Funds.** Grantee shall repay any and all funds received as a result of this Agreement in the event of default or unlawful use of funds. ODOT may demand repayment of funds from the Grantee, at the Department's sole discretion.

8.8. **Closeout.** Grantee must liquidate all obligations incurred under this Agreement and submit all financial, performance, and other reports as required by the terms of this Agreement and the Federal award within 90 calendar days of the end date of the period of performance. The State will determine, at its sole discretion, whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the

audit has been completed. Monitoring of any capital assets acquired with grant funds will continue following grant closeout.

- 8.9. **Conditions of Payment.** All Project work provided by Grantee under this Agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.
- 8.10. **Matching Funds.** Any cost sharing or matching funds required of Grantee in this Agreement must comply with 2 CFR 200.306.

9. **Build America, Buy America Act**

- 9.1. **General Requirements.** Equipment used for EV charging must comply with both the Title 23 Buy America clause (23 U.S.C. § 313) and the Build America, Buy America Act (Pub. L. No 117-58, div. G §§ 70901– 70927). FHWA has provided a phased waiver to the Buy America provisions for NEVI EV charging equipment (88 FR 10619) to allow for a smoother transition while the market adjusts to the Buy America conditions. This waiver is broken into two phases. The first phase includes equipment manufactured before July 1, 2024, and installed before October 1, 2024. The second phase includes equipment manufactured and/or installed after these dates until a future date to be determined by FHWA. For the purposes of this Agreement, all proposed equipment and costs will assume compliance with the second phase of the waiver, regardless of when equipment is planned to be procured and installed. However, if, after award, equipment is purchased and installed prior to the deadlines of the first phase of the waiver, the first phase requirements may be used for this equipment.
- 9.2. **NEVI BABA Rule.** Exhibit J is attached and incorporated into this Agreement.

10. **Civil Rights and Non-Discrimination Requirements.**

- 10.1. **Title VI of the Civil Rights Act.** Exhibit G is attached and incorporated into this Agreement.
- 10.2. **Equal Employment Opportunity.** Exhibit G is attached and incorporated into this Agreement.
- 10.3. **Other Federal Nondiscrimination Requirements.** Exhibit G is attached and incorporated into this Agreement.
- 10.4. **Discrimination Prohibited Americans with Disabilities Act of 1990 (ADA).**
- 10.4.1. **General Requirements.** The ADA and implementing regulations apply to EV charging stations by prohibiting discrimination on the basis of disability by public and private entities. EV charging stations must comply with applicable accessibility standards adopted by the Department of Transportation into its ADA regulations (49

CFR part 37) in 2006, and adopted by the Department of Justice into its ADA regulations (28 CFR parts 35 and 36) in 2010.

10.4.2. **Accessible EV Charging Stations.** Exhibit L is attached and incorporated into this Agreement.

10.5. **Fair Housing Act, Title VII of the Civil Rights Act.** All applicable requirements of Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), and implementing regulations, apply to this Agreement.

11. Prevailing Wages and Labor Standards.

11.1. **Davis-Bacon Act, as amended.** Exhibit H is attached and incorporated into this Agreement. Grantee will comply with Davis-Bacon Act (40 U.S.C. 3141 et seq.). Failure to comply may result in civil or criminal penalties.

11.2. **Oregon Prevailing Wage Act.** Exhibit H is attached and incorporated into this Agreement. Grantee will comply with prevailing wage provisions of Oregon Revised Statute 279C, as applicable. Failure to comply may result in civil or criminal penalties.

12. State and Federal Environmental Laws.

12.1. **Environmental Review.**

12.2. **General Requirements.** The National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's NEPA implementing regulations, and applicable agency NEPA procedures apply to this Agreement by establishing procedural requirements to ensure that Federal agencies consider the consequences of their proposed actions on the human environment and inform the public about their decision making for major Federal actions significantly affecting the quality of the human environment.

12.2.1. **Roles and Responsibilities.** The State will conduct environmental review for the proposed site work related to EV charger installation as required by NEPA. Grantee will be responsible for all permitting responsibilities and third-party agreements for the site. Grantees shall also provide access and right-of-entry to ODOT as requested for purposes of environmental review and due diligence. Any amendments to the obtained NEPA clearances will be the responsibility of the Grantee.

12.2.2. **Conditional Award.** The State will conduct an environmental review at the State's expense, in compliance with NEPA. If the State determines NEPA review will take additional time and/or would result in an undue cost to ODOT, or the NEPA review determines the Project would significantly impact the environment, the State may cancel its award of this Project.

12.3. **Clean Air Act and the Federal Water Pollution Control Act.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued under the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as

amended (33 U.S.C. 1251-1387). Violations must be reported to the ODOT, the FHWA and the Regional Office of the Environmental Protection Agency (EPA).

13. Additional Federal Requirements

- 13.1. **Uniform Relocation Assistance and Real Property Acquisition Act.** The Uniform Relocation Assistance and Real Property Acquisition Act, and implementing regulations, establish minimum standards for federally funded programs and projects that involve the acquisition of real property (real estate) or the displacement or relocation of persons from their homes, businesses, or farms, and applies to this Agreement.
- 13.2. **Telecommunications Certification.** By signing this Agreement, Grantee certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), and 2 CFR 200.216, Grantee will not use funding covered by this Agreement to procure or obtain, or to extend, renew, or enter into any contract to procure or obtain, any equipment, system, or service that uses “covered telecommunications equipment or services” (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. Grantee will include this certification as a flow down clause in any contract related to this Agreement.
- 13.3. **Appendix II 2 CFR Part 200 Federal Contract Clauses.** Grantee agrees to comply with the federal requirements as identified in 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and agrees to pass through these requirements to its subcontractors and third-party contractors, as applicable.
- 13.4. **Remedies.** Grantee contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where Grantee contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 13.5. **Termination.** All Grantee contracts in excess of \$10,000 must address termination for cause and for convenience by the Grantee including the manner by which it will be affected and the basis for settlement.
- 13.6. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government

Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- 13.7. **Drug-Free Workplace.** In accordance with 2 C.F.R. § 32.400, Grantee will comply with the Drug-Free Workplace requirements under subpart B of 49 C.F.R. Part 32.
- 13.8. **Federal Funding Accountability and Transparency Act (FFATA).** In accordance with 2 C.F.R. 170.220(a), the terms in Appendix A to 2 C.F.R. Part 170 are incorporated by reference into this Agreement.

14. Indemnification.

- 14.1. Grantee shall defend, save, hold harmless, and indemnify the State of Oregon, the Oregon Transportation Commission and its members, the Oregon Department of Transportation and its officers, agents and employees from and against all claims, suits, actions, losses, damages, liabilities, costs (including attorney’s fees) and expenses of any nature whatsoever resulting from, arising out of, or relating to the intentional misconduct, or reckless or negligent acts or omissions of Grantee or its officers, employees, contractors, or agents under this Agreement.
- 14.2. State shall reasonably cooperate in good faith, at Grantee’s reasonable expense, in the defense of a covered claim. Grantee shall select counsel reasonably acceptable to the Oregon Attorney General to defend such claim and all costs of such counsel shall be borne by Grantee. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before such counsel may act in the name of, or represent the interests of, State, its officers, employees or agents. State may elect to assume its own defense with an attorney of its own choice and its own expense at any time State determines important governmental interests are at stake. State agrees to promptly provide Grantee with notice of any claim that may result in an indemnification obligation hereunder. Subject to the limitations noted above, Grantee may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of State, which consent shall not be unreasonably withheld, conditioned or delayed.

15. Insurance Requirements

15.1. Notice to Grantee

- 15.1.1. Grantee shall obtain the following insurance from 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 the State.
- 15.1.2. Grantee is required to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements before the effective date of this Agreement.
- 15.1.3. Grantee will not commence work under the Agreement until it has obtained all the insurance described below and the State has approved such insurance. Grantee will

maintain such insurance in full force and effect throughout the term of this Agreement, unless otherwise specified in this Agreement.

- 15.1.4. Failure of Grantee to provide a Certificate of Insurance for the policies required under this Agreement or renewals thereof, or failure of the Grantee or insurance company to notify the State of the cancellation of policies required under this Agreement, will not constitute a waiver by the State to Grantee to provide such insurance.
- 15.1.5. State reserves the right to immediately terminate this Agreement if Grantee is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against Grantee.
- 15.1.6. All insurance providers are subject to State acceptance. If requested by State, Grantee shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to State's Authorized Representative for verification of the insurance requirements.
- 15.1.7. Grantee agrees to periodic review of insurance requirements by State under this Agreement and to provide updated requirements as mutually agreed upon by Grantee and State.

16. Notice to Insurer

- 16.1. Grantee's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 16.2. Insurance certificate holder should be addressed to the State and submitted to the State's Authorized Representative.
- 16.3. **Additional Insurance Conditions.** The following apply to Grantee, or Grantee's subaward or contractor:
 - 16.3.1. Grantee is responsible for payment of Agreement related insurance premiums and deductibles;
 - 16.3.2. If Grantee is self-insured, a Certificate of Self-Insurance must be attached;
 - 16.3.3. Grantee's policy(ies) must include legal defense fees in addition to its policy limits with the exception of professional liability.
 - 16.3.4. An Umbrella or Excess Liability insurance policy may be used to supplement the Grantee's policy limits to satisfy the full policy limits required by the Agreement.
- 16.4. **Coverages.** Grantee is required to maintain and furnish satisfactory evidence of the following insurance policies:
 - 16.4.1. **Commercial General Liability Insurance.** Commercial General Liability insurance shall be issued on an occurrence basis covering bodily injury, death, 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 coverage shall provide the

Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Commercial General Liability insurance shall not be less than the following amounts:

- \$2,000,000 – per occurrence
- \$4,000,000 – annual aggregate
- \$4,000,000 – annual aggregate – applying to Products/Completed Operations

16.4.2. **Commercial Automobile Liability Insurance.** Commercial Automobile Liability insurance covering business-related automobile use on all owned, non-owned or hired vehicles for bodily injury and property damage. Automobile Liability insurance shall not be less than the following amount:

- \$1,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

16.4.3. **Workers' Compensation Insurance.** All employers, including Grantee, 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 coverage limits of not less than \$500,000 each accident. Grantee shall ensure that each of its subawardees or contractors complies with this requirement.

16.4.4. **Network Security and Privacy Liability Insurance (or equivalent).** Grantee shall provide Network Security and Privacy Liability insurance for the duration of this Agreement and for the period of time in which Grantee (or its business associates or subcontractor(s)) maintains, possesses, stores, or has access to Agency or client data, whichever is longer, with a combined single limit of not less than \$1,000,000 per claim or incident. This insurance must include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of State or client data (which may include, but is not limited to, Personally Identifiable Information ("PII"), Payment Card Data and Protected Health Information ("PHI")) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of State data.

17. **Independent Contractor.** Grantee shall perform the Project as an independent contractor and not as an agent or employee of State. Grantee has no right or authority to incur or create any obligation for or legally bind State in any way. State 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 State, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

18. Grantee's Contract and Procurements. Grantee may enter into contracts with contractors for performance of the Project. If Grantee enters into a contract, Grantee agrees to comply with the following:

18.1. Contracts.

- 18.1.1. All contracts must be in writing, executed by Grantee 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 Grantee of its responsibilities under this Agreement.
- 18.1.2. Grantee shall provide State with a copy of any signed contract, as well as any other purchasing or contracting documentation, upon State's request at any time. This subparagraph shall survive expiration or termination of this Agreement.
- 18.1.3. Grantee must report to State any material breach of a term or condition of a contract within ten (10) calendar days of Grantee discovering the breach.
- 18.1.4. Before starting work on the Project, contractors and subcontractors shall each file with the Oregon Construction Contractors Board, and maintain in full force and effect, a separate public works bond, in the amount of \$30,000 unless otherwise exempt, as required by ORS 279C.830(2) and ORS 279C.836. The Grantee shall verify that all contractors and subcontractors have filed a public works bond before beginning work on the Project.
- 18.1.5. Contractors and subcontractors shall comply with the provisions of FHWA Form 1273, *Required Contract Provisions Federal-aid Construction Contracts*.
- 18.1.6. Grantee's contracts with its contractors and any contractor's subcontracts and at any lower tiered subcontracts shall contain a clause or condition that if the contractor or any subcontractor fails, neglects, or refuses to make payment to an entity furnishing labor or materials in connection with this Agreement, the entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580.
- 18.1.7. In accordance with the provisions of ORS 279C.580, subcontracts shall also include:
 - i. A payment clause that obligates the contractor to pay the contractor's first-tier subcontractor for satisfactory performance under the subcontract within 10 calendar days out of amounts the Grantee pays to the contractor under the contract.
 - ii. A clause that requires the contractor to provide the contractor's first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the contractor.
 - iii. A clause that requires the contractor, except as otherwise provided in this subsection, to use the same form and regular administrative procedures for

processing payments during the entire term of the subcontract. The contractor may change the form or the regular administrative procedures the contractor uses for processing payments if the contractor:

- Notifies the subcontractor in writing at least 45 calendar days before the date on which the contractor makes the change; and
- Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

- 18.1.8. An interest penalty clause that obligates the contractor, if the contractor does not pay the first-tier subcontractor within 30 calendar days after receiving payment from the Grantee, to pay the first-tier subcontractor an interest penalty on amounts due in each payment the contractor does not make in accordance with the payment clause included in the subcontract. The contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the Grantee or the contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and ends on the date on which the amount due is paid. The rate of interest on the amount due shall be nine percent per annum.
- 18.1.9. A clause that requires the contractor's first-tier subcontractor to include a payment clause and an interest penalty clause that conform to the standards of ORS 279C.580 in each of the subcontractor's first-tier subcontracts and to require each of the subcontractor's first-tier subcontractors to include such clauses in its subcontracts with each lower-tier subcontractor or material supplier.
- 18.1.10. As required by ORS 279C.800 through ORS 279C.870, subcontracts shall include:
- A provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt.
 - A provision requiring that the workers shall be paid not less than the specified minimum hourly rate of wage.
- 18.1.11. Certified Payroll:
- As required by ORS 279C.845, the Grantee, their contractor(s) and all subcontractors shall submit written certified statements to ODOT on the form prescribed by the Commissioner of BOLI in OAR 839-025-0010 certifying compliance with wage payment requirements and accurately setting out the Grantee's, contractor(s), and subcontractors weekly payroll records for each worker employed on the Project.
 - In addition to providing the payroll information and certified statements required under ORS 279C.845, the Grantee, their contractor(s) and all

subcontractors shall submit written certified statements that also meet the requirements in Section IV of FHWA Form 1273, except the Grantee, their contractor(s) and every subcontractor shall preserve the certified statements for a period of six years from the date of completion of the Agreement.

18.2. Contract Indemnification.

- 18.2.1. Grantee's contracts shall require the other party to such contract that is not a unit 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 its members, and the Oregon Department of Transportation, and its officers, agents and employees, from and against any and all claims, suits, actions, liabilities, damages, losses, cost and expenses, including attorneys' fees, of any nature whatsoever resulting from, arising out of or relating to, in whole or in part, by the negligent or willful acts or omissions of the other party to Grantee's contract or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Grantee's contracts from and against any and all Claims.
- 18.2.2. Any such indemnification shall also provide that neither Grantee's contractors nor any subcontractors, nor any attorney engaged by Grantee's contractors or subcontractors shall defend any claim in the name of ODOT 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 contractors or subcontractors is prohibited from defending the State, or that Grantee's contractors or subcontractors is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Grantee's contractors or subcontractors if the State of Oregon elects to assume its own defense.
- 18.2.3. Grantee shall include provisions in each of its contracts requiring its contractors or subcontractors to comply with the indemnification requirements within this Contract Indemnification section.

18.3. Contract Insurance.

- 18.3.1. Grantee shall require its contractors to obtain and maintain insurance coverage that the Grantee deems appropriate based on the risks of the contract work. Grantee shall require its contractors to meet the requirements provided in section 17.3 Additional Insurance Conditions. Grantee shall verify that each of its contractors meet the insurance requirements.

18.3.2. Grantee shall require its contractors to require and verify that all subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the contract work.

18.3.3. Grantee shall include provisions in each of its contracts requiring its contractor(s) to comply with the insurance requirements within this Contract Insurance section.

19. **State Audits.** Grantee's books, records, documents, and accounting procedures and practices of Grantee, or other party relevant to this Agreement or transaction, are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. Grantee will take timely and appropriate action on all deficiencies identified by an audit.

20. **Publicity and Endorsement.**

20.1. **Publicity.** Grantee must contact the State with a draft of the publicity regarding the subject matter of this Agreement and provide the State the opportunity to decide if it will be identified as the sponsoring agency. Any publicity must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement. Grantee shall provide ODOT a link to any website created about the Project before costs being considered eligible for reimbursement. Recipient shall notify ODOT in writing when the link changes during the term of the Agreement.

20.2. **No Endorsement.** Grantee must not claim that the State endorses its products or services.

20.3. **Disclaimer.** Grantee must include the following statement in all plans, studies and reports funded under this Agreement: "The preparation of this report has been funded in part by the U.S. Department of Transportation and Federal Highway Administration. The contents of this document reflect the views of the authors who are responsible for the facts or accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the U.S. Department of Transportation. The report does not constitute a standard, specification, or regulation."

21. **Termination and Suspension.**

21.1. **Termination by the State.** The State may terminate this Agreement at any time, with or without cause, upon written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for Project work satisfactorily performed before termination.

21.2. **Termination for Cause.** The State may immediately terminate this Agreement if the State finds that there has been a failure to comply with the provisions of this Agreement, that

reasonable progress has not been made, that fraudulent or wasteful activity has occurred, that Grantee has been convicted of a criminal offense relating to a state grant agreement, or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Oregon, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

- 21.3. **Termination for Insufficient Funding.** The State may immediately terminate this Agreement if it fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement. Termination must be by written or email notice to the Grantee. The State is not obligated to pay for any Project work that is provided after the notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for Project work satisfactorily performed to the extent that funds are available. The State will provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.
- 21.4. **Suspension.** The State may immediately suspend this Agreement in the event of a total or partial government shutdown or revocation or suspension of federal funding. Work performed by the Grantee during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.
- 21.5. **Procedures upon Termination.**
- 21.5.1. **Notice.** ODOT shall provide written notice to the Grantee of the decision to terminate, the reason(s) for the termination, and the effective date of the termination. If there is a partial termination due to a reduction in funding, the notice will set forth the change in funding and the changes in the approved budget. The Grantee shall not incur new obligations beyond the effective date of the termination and shall cancel as many outstanding obligations as possible. ODOT's share of non-cancellable obligations, which ODOT determines were incurred properly prior to notice of cancellation, will be allowable costs, subject to this Agreement.
- 21.5.2. **Rights in Products.** All finished and unfinished documents, data, reports, or other material prepared by the Grantee under this Agreement shall, at ODOT's option, become the property of ODOT.
- 21.5.3. **Return of Funds.** Any costs paid previously by ODOT, which are subsequently determined to be unallowable through audit, monitoring, or closeout procedures, shall be returned to ODOT within 30 days from notice by ODOT of the unallowable costs.

22. Default.

- 22.1. **Events of Default.** The following shall constitute Events of Default under this Agreement:

- 22.2. **Material Misrepresentation.** If at any time any representation, warranty, or statement made or furnished to ODOT by, or on behalf of, the Grantee in connection with this Agreement or to induce ODOT to make an award to the Grantee shall be determined by ODOT to be incorrect, false, misleading or erroneous in any material respect when made or furnished and shall not have been remedied to ODOT's satisfaction within 30 days after written notice by ODOT is given to the Grantee.
- 22.3. **Noncompliance.** If there is a failure by the Grantee to comply with any of the covenants, terms, or conditions contained in this Agreement.
- 22.4. **Misspending.** If the Grantee expends grant proceeds for purposes not described in the Proposal, this Agreement, or as authorized by ODOT.
- 22.4.1. **Lack of Capacity.** If the Grantee demonstrates a lack of capacity to carry out the approved activities and Project work in a timely manner and with the funds awarded, at the sole discretion of ODOT.
- 22.4.2. **Abandonment.** If the Grantee abandons any activities or Project work under this Agreement.
- 22.4.3. **Failure to Comply with Laws.** If the Grantee has failed to verify compliance with any state or federal laws, rules, regulations, guidance, or orders.
- 22.5. **Notice of Default.** ODOT shall issue a written notice of default providing a 15-day period in which the Grantee shall have an opportunity to cure, provided that cure is possible and feasible.
- 22.6. **Remedies upon Default.** If the default remains after the opportunity to cure, ODOT shall have the right, in addition to any rights and remedies available by law, to do one or more of the following:
- 22.6.1. **Reduce Payment.** Reduce the level of funds the Grantee would otherwise be entitled to receive under this Agreement,
- 22.6.2. **Repayment.** Require immediate repayment of up to the full amount of funds disbursed to the Grantee under this Agreement, including making a claim against the Letter of Credit provided to the Department, up to the full amount of the Letter of Credit. ODOT shall have sole discretion to determine the amount of the claim.
- 22.6.3. **Conditional Payments.** Refuse or condition any future disbursements upon conditions specified in writing by ODOT.

23. Assignment, Amendments, and Waiver.

- 23.1. **Assignment.** Grantee may neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

- 23.2. **Amendments.** Any amendments to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 23.3. **Waiver.** If the State fails to enforce any provision of this Agreement, that failure does not waive the provision or the State's right to subsequently enforce it.
24. **Grant Agreement Complete.** This Agreement contains all negotiations and agreements between the State and Grantee. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.
25. **Governing Law, Jurisdiction, and Venue.** 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 ODOT (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.
26. **Notice of Proceedings**
- 26.1. Grantee shall notify the State within 30 days of the initiation of any claims, lawsuits, or proceedings brought against the Grantee.
- 26.2. In the event Grantee becomes aware of any material alteration in the Project, initiation of any investigation or proceeding involving the Project, or any other similar occurrence, the Grantee shall notify the State promptly.

[The remainder of this page has intentionally been left blank]

Grantee, by and through its governing body

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

By _____

Name _____
(printed)
Date _____

LEGAL REVIEW APPROVAL
(If required in Grantee's process)

By _____
Grantee's Legal Counsel

Date _____

• Grantee's UEI: _____

- Grantee is required to report executive compensation to comply with the Federal Transparency Act:
Yes____ No____

STATE OF OREGON, by and through its Department of Transportation

By _____
Director

Name _____
(printed)

Date _____

APPROVAL RECOMMENDED

By _____
Program Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____