

## RESOLUTION NO. 2350

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON, PORT OF PORTLAND, MULTNOMAH COUNTY, MULTNOMAH COUNTY DRAINAGE DISTRICT, SANDY DRAINAGE IMPROVEMENT COMPANY, AND THE CITY OF FAIRVIEW FOR THE DESIGN, PERMITTING, RIGHT-OF-WAY ACQUISITION, CONSTRUCTION, OPERATION AND MAINTENANCE OF SEGMENTS OF THE "40-MILE LOOP" TRAIL BETWEEN BLUE LAKE PARK AND NE HARLOW ROAD**

### THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. The City of Troutdale contains existing and planned segments of the "40-mile Loop" regional trail.
2. A 1.6 mile segment of the "40-mile loop" trail was completed atop the Sandy Drainage Improvement Company levee between NW Sundial Road and NW Graham Road (at Perimeter Way) in conjunction with TRIP Phase I, and dedicated to the City for operation and maintenance.
3. The City of Troutdale and its agency partners desire the construction of additional segments of the trail between NW Sundial Road and Blue Lake Park, between NW Graham Road (at Perimeter Way) and NE Harlow Road.
4. The above-referenced segments of the trail have received regional Metropolitan Transportation Improvement Program grant funding to execute the project, with the Port of Portland acting as the lead agency for execution. The City of Troutdale has previously committed to provide one-third of the matching funds for the project with the Port providing the remaining two-thirds match.
5. The Oregon Department of Transportation, as the State level administrators of the grant, have also included a trail connection along Jordan Road as an element of the project, completing a trail connection to the Sandy River Delta Park, and increased the grant funding accordingly.
6. The project involves a number of agency partners with varying roles and responsibilities associated with the project. The City and its partners desire to execute a multi-agency Intergovernmental Agreement to establish the roles and responsibilities of these various agencies in the execution of the project.


**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE**

Section 1. The City Manager is authorized to execute an Intergovernmental Agreement with the State of Oregon, Port of Portland, Multnomah County, Multnomah County Drainage District, Sandy Drainage Improvement Company, and the City of Fairview for the design, permitting, right-of-way acquisition, construction, operation and maintenance of segments of the "40-Mile Loop" trail between Blue Lake Park and NE Harlow Road, substantially in conformance with Attachment A.

Section 2. This resolution is effective immediately upon adoption.

**YEAS: 6  
NAYS: 0  
ABSTAINED: 0**

  
\_\_\_\_\_  
**Doug Daoust, Mayor**  
Date 7/13/16

  
\_\_\_\_\_  
**Sarah Skroch, City Recorder**  
Adopted: July 12, 2016

**LOCAL AGENCY AGREEMENT  
SURFACE TRANSPORTATION PROGRAM – URBAN  
40 MILE LOOP: BLUE LAKE PARK - SUNDIAL RD**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," the PORT OF PORTLAND, a Port district of the State of Oregon, acting by and through its Executive Director, hereinafter referred to as "Port," Multnomah County, acting by and through its elected officials, hereinafter referred to as "County," MULTNOMAH COUNTY DRAINAGE DISTRICT, acting by and through its elected officials, hereinafter referred to as "MCDD," SANDY DRAINAGE IMPROVEMENT COMPANY, acting by and through its elected officials, hereinafter referred to as "SDIC," the CITY OF TROUTDALE, a municipal subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "Troutdale," and the CITY OF FAIRVIEW, a municipal subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "Fairview," each herein referred to as a "Party" and collectively as the "Parties."

**RECITALS**

1. The 40-Mile Loop Trail is a multi-jurisdictional publically-owned bicycle- pedestrian trail located in Multnomah County. Portions of the trail addressed in this Agreement pass through the jurisdiction or property of the various Parties to this Agreement.
2. NE Sundial Road, NE Marine Drive and NE 223<sup>rd</sup> Avenue are a part of the County Road system under the jurisdiction and control of County. NE Harlow Road is part of the city street system under the jurisdiction and control of Troutdale. Jordan Road is a local access road owned by State under the jurisdiction and control of Oregon Transportation Commission (OTC). The Columbia River and Sandy River levees are federal flood control levees under the jurisdiction and control of MCDD and SDIC.
3. Port has been awarded funds by Metro under the Federal-Aid Urban Surface Transportation Program ("STP-U") pursuant to Title 23, United States Code, to fund acquisition of easements, permitting, design and construction for three sections of the 40-Mile Loop Trail: a 1.7-mile connection from Blue Lake Park to Sundial Road, hereinafter "**Blue Lake Section**"; a .33- mile section connecting the terminus of the existing trail located at the north-east end of the Troutdale Airport runway to Harlow Road, hereinafter "**Harlow Road Section**"; and a 1000 linear foot (+/-) section of multi-use path north of Jordan Road connecting the trail from the new pedestrian tunnel under I-84 and to Sandy River Delta Park, hereinafter referred to as the "**Jordan Road Section**"; as further described in the MTIP and shown in the attached **Exhibits A and B**, and by this reference made a part hereof, (the Project).
4. Portions of the Project will be constructed upon County right-of-way, including a connection to the existing Marine Drive multi-use trail and trail crossings at NE 223<sup>rd</sup> Avenue and NE Sundial Road. A flashing beacon will be installed at Marine Drive to

connect the trail with the existing multi-use path on the south side of Marine Drive.

5. Portions of the Project will also be constructed upon or adjacent to the District's federal flood control system, which is subject to certain flood control or levee operations, regulatory requirements and standards within the MCDD and SDIC levee easement.
6. Portions of the project will be constructed within public trail easements to be acquired from property owned respectively by the Port, Metro, US Forest Service (USFS), and private third parties. State and Port will enter into separate Right of Way Services Agreement No. 29846 to address responsibilities for land acquisition and right-of-way requirements for the Project.
7. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
8. State, Port, County, MCDD, SDIC, Troutdale and Fairview wish to enter into this Agreement to authorize and provide for the design, construction and long term maintenance of the Project.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

#### **TERMS OF AGREEMENT**

1. This Project involves three sections of the 40-Mile Loop Trail as described in Recital No. 3, all hereinafter referred to collectively as the "Project". The Project includes the design, permitting, and construction of the Blue Lake Section and the design, permitting and possible construction of the Harlow Road and Jordan Road Sections. The Project will be re-evaluated at the 60 percent design stage at which point the State, Metro and Port will jointly determine if construction of all sections can be accomplished within the available remaining Project funds. Should additional funds be necessary to complete all sections of the project, the parties may amend this Agreement to include the additional funding. Otherwise, the Port and State agree to prioritize construction of trail segments in the following prioritized order: (1) Blue Lake Section; (2) Harlow Road Section; and (3) Jordan Road Section, as remaining funds allow. If final Project does not include construction of all three sections the Port will provide shelf-ready Plans, Specifications and Estimates ("PS&E") packages to State for the sections not being constructed.
2. The Project will be conducted as a part of the Federal-Aid Urban Surface Transportation Program under Title 23, United States Code. The total Project cost is estimated at \$3,424,073 ("Estimated Cost"), which is subject to change. STP-U funds for this Project will be limited to \$3,072,421. The Project will be financed with STP-U funds at the maximum allowable federal participating amount, which is 89.73

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percent, with Port providing the 10.27 percent match for eligible costs and paying for any non-participating costs, including all costs in excess of the available federal funds. Any Project costs, including without limitation costs pursuant to the Right of Way Services Agreement, exceeding the Estimated Cost shall be subject to the Port's prior written approval.

3. The Federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA): Any work performed by the Port prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Port expense.
4. State considers Port a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
5. The term of this Agreement will begin upon execution by the Parties and will terminate upon completion of the Project and final payment, or ten (10) calendar years following the date of final execution of this Agreement, whichever is sooner, unless this Agreement is earlier terminated pursuant to the terms of this Agreement.
6. This Agreement may be terminated by mutual written consent of all parties.
7. State may terminate this Agreement effective upon delivery of written notice to Port and the other Parties to this Agreement, or at such later date as may be established by State, under any of the following conditions:
  - a. If Port fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Port fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If Port fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.

8. Port may terminate this Agreement effective upon delivery of written notice to State and other Parties to this Agreement, or at such later date as may be established by Port, under any of the following conditions:
  - a. If State fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If State fails to perform any of the State's other obligations under this Agreement, and after receipt of written notice from Port fails to correct such failures within ten (10) days or such longer period as Port may authorize.
  - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
9. Either State or Port may terminate this Agreement effective upon delivery of written notice to the other Parties to this Agreement if State and Port are unable to obtain required governmental approvals, rights of entry or right of way within the timelines required for completion of the Project, or to resolve issues related to environmental or other Studies (defined below) or costs in excess of the Estimated Cost.
10. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
11. Information required by 2 CFR 200.331(a), except for (xiii) Indirect cost rate, shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to Port with the Notice to Proceed.
12. The indirect cost rate for this project at the time the agreement is written is zero percent.
13. The Special and Standard Provisions attached hereto, marked **Attachments 1 and 2**, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in **Attachments 1 and 2**. In the event of a conflict, this Agreement will control over **Attachments 1 and 2**, and **Attachment 1** will control over **Attachment 2**.
14. Port, Multnomah County, Troutdale and Fairview shall, upon completion of Project and as a condition to this Agreement, complete and file with the appropriate County Clerk, an Acknowledgment of Federal Assistance, which is attached hereto as **Exhibit C**, and by this reference is made a part hereof or the filing of a memorandum of this Agreement including Acknowledgement of Federal Assistance.

Port shall provide confirmation of this filing by forwarding to the State's Region 1 Manager a conformed copy of the recorded **Exhibit C** or memorandum. By means of said acknowledgment of Port's financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation or demand is recognized and attached to the property as conditions of receipt of these funds. Any interest in said property by State is proportional to the federal and state participation in Project. Port will be ineligible to receive any state or federal funds while in default of the Port's obligations pursuant to this Agreement or the Acknowledgment of Federal Assistance, but shall have no liability for any default of by Troutdale and Fairview of their respective obligations pursuant to this Agreement or the Acknowledgement.

**15. Port's Obligations**

- a. State will hire the Consultant and Port shall perform all project management for preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates for all sections of the Project ("PE Work"). If Port chooses to use ODOT's Region 1 On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects, Port shall assist State in performing project manager services for administration of the contract and shall assist State in managing the work performed by the consultant and shall make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
- b. Port shall conduct the necessary field surveys; foundation explorations; and traffic, hydraulic, geotechnical and storm water studies as determined necessary by Port and State for the three sections of the Project.
- c. Port shall identify and obtain all local governmental, State and Federal permits, necessary to construct the three sections of the Project except those identified under State Obligations. Port shall also be responsible for any Project coordination with all local governments and the FAA. Port's construction permit obligations include any US Army Corps of Engineers (USACE) permits required for Project impacts on the levee that is a flood protection system, and include coordination with MCDD and SDIC and reimbursement of MCDD and/or SDIC costs and expenses of compliance with applicable flood control or levee operation regulations and standards incurred during and as a direct result of design and construction of the Project and supported by reasonable documentation.
- d. All work by any contractors for the Project work within Port owned portions of the Project will be pursuant to the Port's form of Permit and Right of Entry for work within the Port's Troutdale Industrial Park. State's access to portions of the Project within the Port's Troutdale Reynolds Industrial Park for any non-construction activities is subject to receipt from the Port of the Port's form of Permit and Right of Entry for access to the property.

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- e. Upon State's award of the construction contract, Port, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
- f. Port shall assist State with acquisition of necessary right of way and/or easements as provided in separate Right-of-Way Services Agreement No. 29846 ("ROWSA").
- g. Port, as a subrecipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Port's breach of any federal statutes, rules, program requirements and grant provisions applicable to the Port's performance of its obligations pursuant to this Agreement, and will, upon Port's breach of any such conditions that requires State to return funds to the Federal Highway Administration, hold harmless and, subject to the limitations in the Oregon Tort Claims Act and Oregon Constitution, indemnify State for an amount up to, but not to exceed, the funds received by Port from State under this Agreement; or if legal limitations apply to the indemnification ability of Port, the indemnification amount will be the maximum amount of funds legally available for expenditure, including any available contingency funds or other available non-appropriated funds, up to, but not to exceed the amount received under this Agreement. With respect to any indemnity by the Port pursuant to this Agreement, the ROWSA, or any other agreement related to the Project, such indemnity obligations shall survive for a period of two (2) years following completion of the Port's construction of the Project, after which time such indemnity obligations shall terminate and be of no further force or effect.
- h. During the construction of the Project, to the extent the Port terminates this Agreement pursuant to paragraph 8.d. of this Agreement as a result of a noncompliance with changed or modified flood control or levee regulatory requirements and standards affecting the MCDD and SDIC flood control system, the Port will correct such noncompliance with Project funds to ensure the flood control system is in compliance
- i. Port shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents, Troutdale, Fairview, and County, 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 Port's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from

- the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
- j. Any such indemnification shall also provide that neither Port's contractor and subcontractor nor any attorney engaged by Port's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, Troutdale, Fairview, and County nor purport to act as legal representative of the State of Oregon or any of its agencies, Troutdale, Fairview, and County without the prior written consent of the Oregon Attorney General or the legal counsel of Troutdale, Fairview, and County. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Port's contractor is prohibited from defending the State of Oregon, Troutdale, Fairview, and County, or that Port's contractor is not adequately defending the State of Oregon's, Troutdale's, Fairview's, and County's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon, Troutdale, Fairview, and County to do so. The State of Oregon Troutdale, Fairview, and County reserve all rights to pursue claims it may have against Port's contractor if the State of Oregon, Troutdale, Fairview, or County elects to assume its own defense.
- k. Port will include the following provisions in its construction contract(s) with contractors for performance of work on the project and will require its contractors to agree to the following:
- i. Contractor and Port shall name State, Troutdale, Fairview, and County as third party beneficiaries of the resulting contract.
  - ii. Contractor shall indemnify, defend and hold harmless State, Troutdale, Fairview, and County from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under the resulting contract.
  - iii. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State, Troutdale, Fairview, and County. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$2,048,000 for each job site

or location. Each annual aggregate limit shall not be less than \$4,096,000.

- iv. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.
  - v. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees, Troutdale, Fairview, and County as Additional Insured but only with respect to the Contractor's activities to be performed under the resulting contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
  - vi. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State, Troutdale, Fairview, and County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of the resulting contract and shall be grounds for immediate termination of the resulting contract and this Agreement.
- I. All covenants provided in this Section, and the indemnities set forth in subsection (g) will survive termination of this Agreement, but any claim for breach of any covenant provided in this Section must be made within two (2) years of such termination, after which any right to make a claim is extinguished.

#### **16. State's Obligations**

- a. State shall coordinate with the Port to perform environmental studies as determined by Port and State, to obtain the required National Environmental Policy Act (NEPA) clearance and shall complete the environmental and hazmat investigations for all sections of the Project. The State will perform an investigation consistent with the AASHTO Guide for Hazardous Waste Guide for Project Development (February 1990) to evaluate the potential presence on the Project site of any Hazardous Substance Release prior to construction. The Parties agree that in the event that a Hazardous Substance Release is discovered during construction of the Project, the Parties will suspend Project performance and consult with one another to determine next steps. The

Parties each acknowledge that further agreements may be necessary to address the Parties' respective rights and liabilities with respect to such discovery of any Hazardous Substance Release. For purposes of this Agreement, the following definitions shall apply:

"Hazardous Substance Release" means the threatened or actual spilling, discharge, deposit, injection, dumping, emitting, releasing, placing, leaking, migrating, leaching, and seeping of any Hazardous Substance into the air or into or on any land, sediment or waters, except any release in compliance with Environmental Law and specifically authorized by a current and valid permit issued under Environmental Law which Lessee is in compliance with at the time of the Hazardous Substance Release, but not including, within the exception, any such release in respect of which the State of Oregon has determined that application of the State of Oregon's Hazardous Substance removal and remedial action rules might be necessary in order to protect public health, safety or welfare, or the environment.

As used in this Agreement, the following definitions shall apply:

"Environmental Law" means any and all federal, State of Oregon and local laws, regulations, rules, permit terms including but not limited to any storm water pollution control requirements, codes and ordinances now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which govern materials, substances, regulated wastes, petroleum products, emissions, pollutants, animals or plants, noise, or products or relate to the protection of human health, natural resources, safety or the environment.

"Hazardous Substance" means any and all substances, pollutants, contaminants, materials or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any applicable Environmental Law. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum-derived products."

- b. State shall perform Section 106 Clearance for the National Historic Preservation Act (NHPA) Requirements; the Endangered Species Act (ESA) No Effect Memo; the National Scenic Area (NSA) Permit; the Section 4(f) Temporary Occupancy Permit; and the Categorical Exclusion Closeout.
- c. State shall advertise, bid and award the construction contract for the Project.
- d. State shall provide the Port with proposed contracts with third party consultants and contractors for the Project design and construction work for the Port's review and comment.

- e. The State shall oversee each of the Port's project management services during preliminary engineering and for the administration of the construction contract. All billings for contract work shall be approved by Port and State. State shall be responsible for invoicing.
- f. State shall make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects. State will contract with the consultant for such services.
- g. State will obtain from USFS and each private owner of real property within the Project Area rights of entry as needed for environmental study purposes.
- h. State shall acquire easements and right of way necessary for the Project as agreed to in ROWSA No. 29846. Upon completion of construction of the Project, and acquisition by State of right of way easements, State shall transfer the right of way easements and ownership of the Project right-of-way to Fairview and Troutdale for such Parties' maintenance, repair, or removal (the "Continuing Trail Obligations") of the paved trail surface and immediate subsurface that does not comprise any structural portion of the levee as provided in this Agreement. The Continuing Trail Obligations includes, but are not limited to, inspection, repair, and removal of the paved trail surface and immediate subsurface that does not comprise any structural portion of the levee, but excludes, without limitation, any portion of the levee proper, as required by applicable flood control or levee operation regulations and standards.
- i. State will obtain the permit and subsequent easement from USFS for the Multnomah County National Scenic Area for the Jordan Trail section of the Project.
- j. State will, at its own expense and upon completion of the Project, maintain the Jordan Trail section of the Project.
- k. State hereby agrees to allow access by Port and the contractors for the Project to State's right of way for construction of this Project for the Jordan Trail section of the Project.
- l. All covenants provided in this Section will survive termination of this Agreement, but any claim for breach of any covenant provided in this Section must be made within two (2) years of such termination, after which any right to make a claim is extinguished.

**17. County, MCDD SDIC Troutdale and Fairview Obligations**

- a. County, MCDD, SDIC, and, if applicable, Troutdale and Fairview hereby agree to allow access to their respective right of way for construction of the Project. If needed the Port and State will apply to the County, MCDD, SDIC, and if applicable Troutdale and Fairview for a permit, right of entry or access permit,

on terms mutually agreed with Port and State, to authorize the Port and State and their contractors to enter upon and construct the Project located upon the respective Parties' rights of way. If issued, each permit will grant a right of entry to the Port, State, and the contractor for the Project, and set forth reasonable terms of said authorization, as mutually agreed with Port and State, including responsibilities for obtaining applicable regulatory approval related to flood control or levee operation, and reasonable indemnification provisions for liability arising out of the Port's supervision of the Project.

- b. All work by the contractor within Port owned portions of the Project will be pursuant to the Port's form of Permit and Right of Entry for work within the Port's Troutdale Industrial Park.
- c. Maintenance responsibilities upon completion of construction of the Project and transfer by State of right of way easements and of ownership of the Project right of way:
  - i. Troutdale and Fairview each shall be responsible at such Party's sole cost for the Continuing Trail Obligations as defined in Paragraph 16.h of those portions of the paved trail surface and immediate subsurface that does not comprise any structural portion of the levee, that fall within such Party's respective City limits excepting those portions located upon County right-of-way.
  - ii. County shall be responsible at its sole cost for the Continuing Trail Obligations of the portions of the Project that fall within County right-of-way and is responsible for maintaining, repairing, and paying for power costs for the pedestrian activated overhead warning light constructed for the Project. County's right-of-way does not impact or concern levee areas and County is not responsible for any maintenance or maintenance costs related to compliance with state or federal flood control or levee operations rules and regulations. County is responsible for maintaining, repairing, and paying for power costs for the pedestrian activated overhead warning light constructed for the Project.
  - iii. Troutdale, Fairview, and County each must maintain those portions of the trail located within their respective jurisdictions at a level that is consistent with normal depreciation and/or service demand, in a manner satisfactory to State and FHWA and in compliance with the relevant drainage and flood protection regulations, requirements and standards and must reimburse SDIC and MCDD-actual costs and expenses of compliance with applicable flood control or levee operation regulations and standards incurred during and as a direct result of such Continuing Trail Obligations. Troutdale and Fairview must rely upon the expertise and knowledge of MCDD and/or SDIC to give Troutdale and Fairview written notice of any non-conformity

or non-compliance with state or federal requirements of flood control or levee operations that give rise to Troutdale's and Fairview's Continuing Trail Obligations. If such modification of the trail becomes required, Fairview and Troutdale reserve the right to remove and not rebuild the trail rather than remedy based on its own reasonable discretion. County, Troutdale and Fairview must indemnify and hold harmless the Port, State, MCDD and SDIC, subject to the limitations set forth in the Oregon Tort Claims Act and the Oregon Constitution, for all claims arising from any County, Troutdale or Fairview failure to perform their respective Continuing Trail Obligations for the Project and meet their other obligations under this Agreement.

- d. All covenants provided in this Section, and the indemnities set forth in subsection (c) will survive termination of this Agreement, but any claim for breach of any covenant or indemnity provided in this Section must be made within two (2) years of such termination, after which any right to make a claim is extinguished...
  - e. This agreement does not create any standards enforceable by nonparties regarding maintenance of any facilities constructed or maintained pursuant to the agreement, and does not create any duties to any nonparty enforceable in tort or otherwise.
18. Each Party certifies and represents that the individual(s) signing this Agreement have been authorized to enter into and execute this Agreement on behalf of such Party, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind such Party.
  19. The following individuals are hereby designated by each Party as that Party's Project Manager under this Agreement. Notices required under this Agreement required or desired to be directed to a Party under this Agreement shall be directed to that Party's Project Manager, at the addresses provided below. Each Party shall notify the other Parties in writing of any changes in the Project Manager or its contact information during the term of this Agreement.
    - a. **State's Project Manager** for this Project is Reem Khaki, Local Agency Liaison, 123 NW Flanders Street, Portland, OR 97209, 503-731-8501, reem.d.khaki@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Parties in writing of any contact information changes during the term of this Agreement.
    - b. **Port's Project Manager** for this Project is Philip Healy, Senior Transportation Planner, 7200 NE Airport Way, Portland, OR 97218, 503-415-6512, Philip.Healy@portofportland.com, or assigned designee upon individual's absence. Port shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

- c. **County's Project Manager** for this Project is Ian B. Cannon, P.E. County Engineer, 1620 SE 190th Avenue Portland, OR 97233 (503) 704-5170 ian.b.cannon@multco.us, or assigned designee upon individual's absence. County shall notify the other Parties in writing of any contact information changes during the term of this Agreement.
- d. **MCDD and SDIC Project Manager** for this Project is Sunny Simpkins 1880 NE Elrod Drive, Portland OR, 97211, 503-281-5675 x 313 ssimpkins@mcdd.org, or assigned designee upon individual's absence. MCDD and SDIC shall notify the other Parties in writing of any contact information changes during the term of this Agreement.
- e. **Troutdale's Project Manager** for this Project is Travis Hultin, City Engineer, 342 SW 4th Street, Troutdale, OR 97060 (503) 674-7265, travis.hultin@troutdaleoregon.gov, or assigned designee upon individual's absence. Troutdale shall notify the other Parties in writing of any contact information changes during the term of this Agreement.
- f. **Fairview's Project Manager** for this Project is Allan Berry, P.E. Public Works Director 1300 NE Village Street Fairview, OR 97024 (503) 674-6235 berrya@ci.fairview.or.us or assigned designee upon individual's absence. Fairview shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

20. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will 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 will constitute an original.

21. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement will not constitute a waiver by State of that or any other provision.

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

This Project is in the 2015-2018 Statewide Transportation Improvement Program, (Key #17270) that was approved by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

**SIGNATURE PAGE TO FOLLOW**

Port/MCDD/SDIC/County/Troutdale/Fairview/State  
Agreement No. 29165

**PORT OF PORTLAND**, by and through  
its Executive Director

By \_\_\_\_\_  
Executive Director

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY FOR THE PORT**

By \_\_\_\_\_  
Port Counsel

Date \_\_\_\_\_

**Port Contact:**  
Phil Healy  
Senior Transportation Planner  
7200 NE Airport Way  
Portland, OR 97208  
503-415-6512  
Philip.healy@portofportland.com

**CITY OF TROUTDALE**, by and through its  
elected officials

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Troutdale Counsel

Date \_\_\_\_\_

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator *Director*

Date 8-12-16

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 1 Manager

Date 8-11-2016

By \_\_\_\_\_  
Project Services Manager

Date 08-10-16

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date 8-1-2016

**State Contact:**  
Reem Khaki  
Local Agency Liaison  
123 NW Flanders Street  
Portland, OR 97209  
503-731-8501  
reem.d.khaki@odot.state.or.us

Port/MCDD/SDIC/County/Troutdale/Fairview/State  
Agreement No. 29165

**PORT OF PORTLAND**, by and through  
its Executive Director

By \_\_\_\_\_  
Executive Director

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY FOR THE PORT**

By \_\_\_\_\_  
Port Counsel

Date \_\_\_\_\_

**Port Contact:**  
Phil Healy  
Senior Transportation Planner  
7200 NE Airport Way  
Portland, OR 97208  
503-415-6512  
Philip.healy@portofportland.com

**CITY OF TROUTDALE**, by and through its  
elected officials

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Troutdale Counsel

Date \_\_\_\_\_

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 1 Manager

Date 8-11-2016

By \_\_\_\_\_  
Project Services Manager

Date 08-10-16

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By Bonnie Hertzsch  
Assistant Attorney General

Date 8-1-2016

**State Contact:**  
Reem Khaki  
Local Agency Liaison  
123 NW Flanders Street  
Portland, OR 97209  
503-731-8501  
reem.d.khaki@odot.state.or.us

**PORT OF PORTLAND**, by and through its Executive Director

By [Signature]  
for BILL WYATT, Executive Director

Date 7/6/16

**STATE OF OREGON**, by and through its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY FOR THE PORT**

By [Signature]  
Port Counsel

Date July 1, 2016

**Port Contact:**

Phil Healy  
Senior Transportation Planner  
7200 NE Airport Way  
Portland, OR 97208  
503-415-6512  
Philip.healy@portofportland.com

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Project Services Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**CITY OF TROUTDALE**, by and through its elected officials

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

**State Contact:**

Reem Khaki  
Local Agency Liaison  
123 NW Flanders Street  
Portland, OR 97209  
503-731-8501  
reem.d.khaki@odot.state.or.us

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Troutdale Counsel

Date \_\_\_\_\_

Port/MCDD/SDIC/County/Troutdale/Fairview/State  
Agreement No. 29165

**PORT OF PORTLAND**, by and through  
its Executive Director

By \_\_\_\_\_  
Executive Director

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY FOR THE PORT**

By \_\_\_\_\_  
Port Counsel

Date \_\_\_\_\_

**Port Contact:**

Phil Healy  
Senior Transportation Planner  
7200 NE Airport Way  
Portland, OR 97208  
503-415-6512  
Philip.healy@portofportland.com

**CITY OF TROUTDALE**, by and through its  
elected officials.

By   
City Manager

Date 7/18/16

**APPROVED AS TO LEGAL SUFFICIENCY**

By   
Troutdale Counsel *Edward Trompke*

Date 7-26-16

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Project Services Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**State Contact:**

Reem Khaki  
Local Agency Liaison  
123 NW Flanders Street  
Portland, OR 97209  
503-731-8501  
reem.d.khaki@odot.state.or.us

Port/MCDD/SDIC/County/Troutdale/Fairview/State Agreement No. 29165

**Troutdale Contact:**

Travis Hultin, City Engineer  
City of Troutdale Public Works  
342 SW 4<sup>th</sup> Street  
Troutdale, OR 97060  
503-674-7265  
travis.hultin@troutdaleoregon.gov

**MULTNOMAH COUNTY DRAINAGE DISTRICT #1**, by and through its elected officials

By \_\_\_\_\_  
Board of Supervisors, President

Date \_\_\_\_\_

**MULTNOMAH COUNTY**, by and through its elected officials

By *[Signature]*  
Chair

By \_\_\_\_\_  
Secretary-Treasurer

Date \_\_\_\_\_

Date 8/9/16

**SANDY DRAINAGE IMPROVEMENT COMPANY**, by and through its elected officials

By \_\_\_\_\_  
Recorder

By \_\_\_\_\_  
Board of Directors, President

Date \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By *[Signature]*  
County Attorney

By \_\_\_\_\_  
Secretary-Treasurer

Date 8/9/16

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

**County Contact:**

Ian B. Cannon  
County Engineer  
1620 SE 190<sup>th</sup> Avenue  
Portland, OR 97233  
503-704-5170  
ian.b.cannon@multco.us

By \_\_\_\_\_  
District Counsel

Date \_\_\_\_\_

**MCDD and SDIC Contact:**

Sunny Simpkins  
Planning Director  
1880 NE Elrod Drive.  
Portland, OR 97211  
503-281-5675 ext. 313  
ssimpkins@mcdd.org

Port/MCDD/SDIC/County/Troutdale/Fairview/State Agreement No. 29165

**Troutdale Contact:**

Travis Hultin, City Engineer  
City of Troutdale Public Works  
342 SW 4<sup>th</sup> Street  
Troutdale, OR 97060  
503-674-7265  
travis.hultin@troutdaleoregon.gov

**MULTNOMAH COUNTY DRAINAGE DISTRICT #1**, by and through its elected officials

By [Signature]  
~~Board of Supervisors, President~~ *Exec. Director*

Date 8/1/16

**MULTNOMAH COUNTY**, by and through its elected officials

By \_\_\_\_\_  
Chair

Date \_\_\_\_\_

By \_\_\_\_\_  
Recorder

Date \_\_\_\_\_

By N/A  
Secretary-Treasurer

Date \_\_\_\_\_

**SANDY DRAINAGE IMPROVEMENT COMPANY**, by and through its elected officials

By [Signature]  
~~Board of Directors, President~~ *Executive Director*

Date 8/1/16

By N/A  
Secretary-Treasurer

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
County Attorney

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
District Counsel

Date \_\_\_\_\_

**County Contact:**


Ian B. Cannon  
County Engineer  
1620 SE 190<sup>th</sup> Avenue  
Portland, OR 97233  
503-704-5170  
ian.b.cannon@multco.us

**MCDD and SDIC Contact:**

Sunny Simpkins  
Planning Director  
1880 NE Elrod Drive  
Portland, OR 97211  
503-281-5675 ext. 313  
ssimpkins@mcdd.org

Port/MCDD/SDIC/County/Troutdale/Fairview/State  
Agreement No. 29165

**CITY OF FAIRVIEW** by and through its  
elected officials

By   
Fairview Manager

Date 8/10/16

**APPROVED AS TO LEGAL SUFFICIENCY**

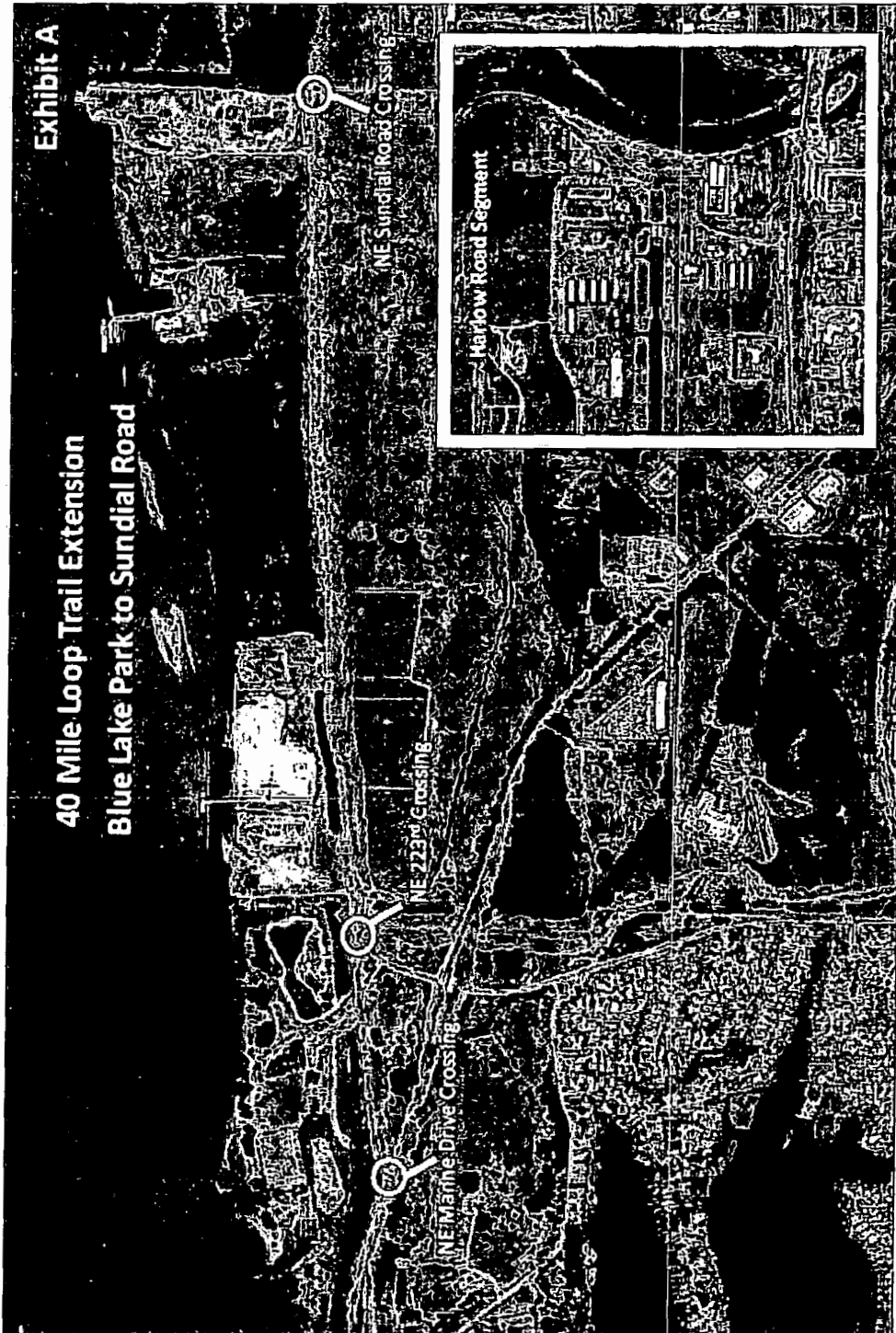
By   
Fairview Counsel

Date 8/9/16

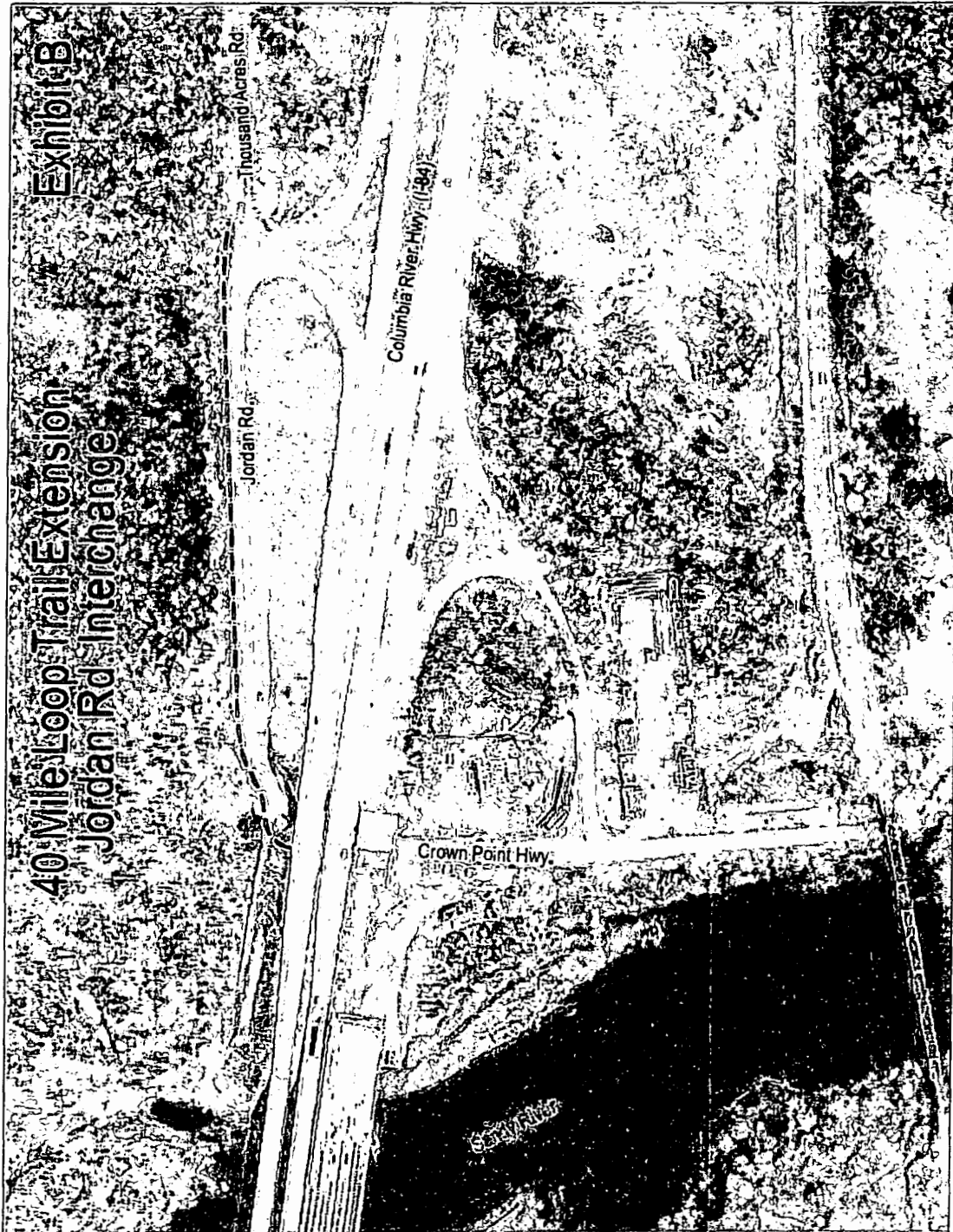
**Fairview Contact:**

Allan Berry, PE  
Public Works Director  
City of Fairview  
1300 NE Village Street  
Fairview, OR 97024  
503.674.6235  
berrya@ci.fairview.or.us

### EXHIBIT A – Project Location Map BLUE LAKE SECTION & HARLOW ROAD SECTION



### EXHIBIT B Project Location Map JORDAN ROAD SECTION



After recording, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT C**  
**MEMORANDUM OF AGREEMENT AND ACKNOWLEDGEMENT OF**  
**FEDERAL ASSISTANCE**

**[State Recording Authority: ORS 93.710 and ORS 205.130(2)]**

Agreement Number: 29165

Project Name: 40 Mile Loop Trail: Blue Lake Park to Sundial Drive

Key Number: 17270

Local Agency Agreement No. 29165 between the Port of Portland, Multnomah County, City of Troutdale, City of Fairview and the State of Oregon, Department of Transportation was executed on \_\_\_\_\_ Pursuant to paragraph 12, Terms of Agreement, page 4 of the Local Agency Agreement, upon the recording of this document, the *Port* received federal funds for the Project described in the Local Agency Agreement. The property and assets under the jurisdiction of Multnomah County, the City of Troutdale, and the City of Fairview, respectively, and the Port were improved with the assistance from the United States Government. Such assistance was provided in reimbursement of costs associated with the Project. The use and disposition of said property is subject to the terms of the above noted Local Agency Agreement, copies of which may be obtained from the Director of ODOT and is also subject to 49 CFR Part 18. A description of the improved property is attached.

**THE PORT OF PORTLAND**

By: \_\_\_\_\_  
(Name of person)

(Notary Stamp)

Title: \_\_\_\_\_

State of Oregon: County of \_\_\_\_\_

Signed or attested before me on \_\_\_\_\_ by \_\_\_\_\_

(name(s) of person(s))

(Date)

\_\_\_\_\_ My commission expires on \_\_\_\_\_

**STATE OF OREGON, DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

(Notary Stamp)



**ATTACHMENT NO. 1 to Agreement No. 29165**  
**SPECIAL PROVISIONS**

1. All contracts for which State is the signatory shall be subject to a not to exceed amount consistent with the estimated Project cost for such work, as mutually agreed by State and Port. State will provide Port with copies of all documentation created or received by State in connection with the Project. Project deliverables and invoices shall be subject to review and approval by State and Port. If at any time unexpected Project costs or impacts to the Project timing or implementation are encountered or expected to be incurred, State and Port will meet promptly and work together to determine possible ways to reduce or mitigate such costs and impacts. State shall require that all consultants and contractors for the Project work defend, indemnify, and hold harmless the Port, and, as applicable the other Parties to this Agreement in a form acceptable to the Port, for, from and against all loss, claims and costs arising from or related to performance of the Project work by such contractors, their employees, agents and subcontractors. Including, without limitation, any claims, loss, or costs resulting from the acts, omissions, or negligence of, contractors, their employees, agents, and subcontractors, and (ii) any Hazardous Substances, whether known or unknown, encountered in the course of performing the Project work. The Port shall be made a third party beneficiary with respect to such indemnification.
2. Any indemnification by the Port pursuant to this Agreement, including, without limitation, Attachment No. 1 or Attachment No. 2, to accept responsibility, defend lawsuits, or indemnify and hold State or any other Party harmless for any claims or other lawsuits, shall be subject to any limitations imposed by state law, including without limitation the Oregon Tort Claims Act and the Oregon Constitution, and, to the extent arising from any work of contractors for the Project, shall be further limited to work performed by such contractors solely under the direction and control of the Port.
3. The Continuing Trail Obligations, as required in paragraph 16.h of the Agreement 29165, will survive any termination of this Agreement 29165.
4. The Parties agree that in the event that any Hazardous Substance Releases are discovered during construction of the Project, the Parties will suspend Project performance and consult with one another to determine next steps. The Parties each acknowledge that further agreements may be necessary to address the Parties' respective rights and liabilities with respect to such discovery of Hazardous Substance Releases.
5. The Parties agree that the useful life of this Project is defined as 20 years. The Continuing Trail Obligations, as required in paragraph 16.h of the Agreement 29165, will survive the useful life of this Project.

6. It is understood that if the trail becomes noncompliant with flood control or levee regulatory requirements and standards and the compliance of which requires the removal of the trail from the levees, State and the Federal Highway Administration (FHWA) would not seek repayment of the project funds. Port, MCDD, and SDIC agree to work with all affected parties to insure that, in such an event and if possible the noncompliance status can be remedied by retaining the trail, but at no cost or expense to MCDD or SDIC. To the extent that the trail cannot be retained to address the noncompliance status, the Port will coordinate with the City of Troutdale, the City of Fairview, and Multnomah County and achieve compliance at no cost or expense to MCDD or SDIC. If remediation or removal of the trail is required by flood control or levee regulatory requirements during the Project construction and up to the period of the warranty in the permit, the remediation or removal can be paid for by the Project funding. After the warranty in the permit, remediation or removal is the responsibility of Troutdale, Fairview, and Multnomah County.

## **ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS**

For the purposes of this Agreement, Agency refers to the Port of Portland.

### **PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. Non-certified agencies must contract with State or a State certified local public agency to secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. Non-certified agencies may use a State-approved consultant to perform preliminary engineering, and construction engineering services.

### **PROJECT FUNDING REQUEST**

4. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

### **FINANCE**

5. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria in 2 CFR 200.330.

6. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the *Local Agency Guidelines Manual* that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.
7. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
10. Agency shall follow the requirements stated in the Single Audit Act. Agencies expending \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, shall have a single organization-wide audit conducted in accordance with the Single Audit Act of 1984, PL 98-502 as amended by PL 104-156 and subject to the requirements of 49 CFR Parts 18 and 19. Agencies expending \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014 shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part. 200, subpart F. Agencies expending less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, is exempt from Federal audit requirements

for that year. Records must be available for review or audit by appropriate officials based on the records retention period identified in the Project Agreement. The cost of this audit can be partially prorated to the federal program.

11. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
12. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the Project Agreement. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one-month duration, based on actual expenses to date. All invoices received from Agency must be approved by State's Liaison prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to State for processing within forty-five (45) days from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction b) last payment for right of way acquisition and c) contract completion for construction. Partial billing (progress payment) shall be submitted to State within forty-five (45) days from date that costs are incurred. Invoices submitted after 45 days may not be eligible for reimbursement by FHWA. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition ((2 CFR 200.333(c)).
13. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
  - b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
14. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test

results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.

15. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

## STANDARDS

16. Agency agrees that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with *State's Oregon Bicycle & Pedestrian Design Guide* (current version). Agency shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. Agency may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
17. Agency agrees that if the Project is on the Oregon State Highway System or State-owned facility, that design standards shall be in compliance with standards specified in the current *ODOT Highway Design Manual* and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current *Oregon Standard Specifications for Highway Construction* and current *Contract Plans Development Guide*.
18. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet *ODOT Highway Design Manual* design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source, any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.
19. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the *Manual on Uniform Traffic Control Devices and Oregon Supplement* as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.
20. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

## PRELIMINARY & CONSTRUCTION ENGINEERING

21. Preliminary engineering and construction engineering may be performed by either a) State, b) Agency, c) State-approved consultant, or d) certified agency. Engineering work will be monitored

by State or certified agency to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, b) State-approved consultant or c) certified agency. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State or certified agency shall, if they prepare any of the documents identified in this paragraph, offer Agency the opportunity to review and approve the documents prior to advertising for bids.

22. Agency may request State's two-tiered consultant selection process as allowed by OAR 137-048-0260 to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of the State's processes is required to ensure federal reimbursement. State will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the consultant prior to receiving authorization from State to proceed.
23. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
24. State or certified agency shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.
25. Upon State's or certified agency's award of a construction contract, State or certified agency shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's *Manual of Field Test Procedures*, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
26. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

**REQUIRED STATEMENT FOR United States Department of Transportation (USDOT)  
FINANCIAL ASSISTANCE AGREEMENT**

27. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, Agency agrees to adopt State's DBE Program Plan, available at [https://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe\\_prog\\_plan.aspx](https://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe_prog_plan.aspx). Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under

part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

### **Disadvantaged Business Enterprises (DBE) Obligations**

28. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

29. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.

30. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; 2 CFR 1201, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

### **RIGHT OF WAY**

31. Agency and the consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24. State, at Project expense, shall review all right of way activities engaged in by Agency to ensure compliance with all laws and regulations.

32. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project provided Agency or the consultant are qualified to do such work, as required by the *ODOT Right of Way Manual*, and Agency has obtained prior approval from State's Region Right of Way office to do such work.

33. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each Party. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be responsible for

coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through State's Liaison, who will forward the request to State's Region Right of Way office on all projects. Agency must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on a project). Agency shall contact State's Liaison, who will contact State's Region Right of Way office for additional information or clarification on behalf of Agency.

34. Agency agrees that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
35. Agency ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.
36. State and Agency grants each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

#### **RAILROADS**

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

#### **UTILITIES**

38. Agency shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

#### **GRADE CHANGE LIABILITY**

39. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
40. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.

41. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Project Agreement.

## **MAINTENANCE RESPONSIBILITIES**

42. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

## **CONTRIBUTION**

43. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
44. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
45. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

## **ALTERNATIVE DISPUTE RESOLUTION**

46. The Parties shall attempt in good faith to resolve any dispute arising out of this Project 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.

## **WORKERS' COMPENSATION COVERAGE**

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

## **LOBBYING RESTRICTIONS – pursuant to Form FHWA-1273, Required Contract Provisions**

48. Agency certifies by signing the Project Agreement that:

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