



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

AGENDA STAFF REPORT CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
9/20/10		

TO: Mayor and City Council

FROM: Nolan K. Young, City Manager *ny*

DATE: September 8, 2010

ISSUE: Authorization for the City Manager to enter into and execute an agreement with the Oregon Department of Transportation for a \$2,055,300 ConnectOregon III grant for the Marine Terminal Project

BACKGROUND: In November of 2009, the City of The Dalles submitted a \$2,055,300 grant request through the Oregon Department of Transportation's ConnectOregon III program. In August, the Oregon Transportation Commission awarded the full grant request (see attached grant award letter).

These funds will be matched with the \$2M US EDA Grant that will allow for completion of the Marine Terminal. The EDA grant will also be matched with Urban Renewal funds to complete the complimentary Lewis and Clark Festival Area project.

Attached is the grant agreement that the City must sign to receive these funds. City Attorney Gene Parker has reviewed the grant application and finds no issues. The sooner we sign the grant award the earlier we can start requesting reimbursement for expenses. Our goal is to have it signed prior to beginning the bidding process so that those funds can be covered. The grant will reimburse us 80% for all expenses for the project up to \$2,055,300.

BUDGET IMPLICATIONS: Both this grant, EDA Grant and Urban Renewal funds have been budgeted for these projects.

COUNCIL ALTERNATIVES:

1. **Staff Recommendation:** Authorize City Manager, Nolan Young to sign the ConnectOregon III Grant Agreement with the Oregon Department of Transportation and to execute this agreement on behalf of the City.
2. Delay this issue to allow for further research.



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation
Local Government Section
355 Capitol St. NE, Room 135
Salem, OR 97301

August 27, 2010

Nolan Young
City of The Dalles
313 Court St
The Dalles, OR 97058

Subject: *ConnectOregon* III – Project Approval
Agreement Number: 26919
Application Number: M40118
Project Name: Marine Terminal Rehabilitation

We are pleased to announce the Oregon Transportation Commission has approved your project for *ConnectOregon* III funding. The *ConnectOregon* III award for your project is \$2,055,300. In the next couple of weeks you will receive an agreement in the mail for signature. Once you receive the agreement, please sign it and return as soon as possible.

Please note that only work performed on the project after the agreement is fully signed and as described in the agreement will be eligible for reimbursement. Additionally, recipients are not eligible to receive reimbursement until they provide a conformed copy of the recorded Acknowledgement of Assistance.

We will be hosting a conference call on **Wednesday, September 8th at 10:00 a.m. - PST** to discuss the following aspects of the *ConnectOregon* III Program:

- Grant Agreement/Notice to Proceed
- ODOT Local Agency Liaison
- Monthly Invoices/Monthly Progress Reports/Project Milestones
- Request for Change Order Process/Amendment Process
- Acknowledgement of Assistance
- Project Acceptance

The conference call number: 1-877-287-0283; Participant Code: 868544

If you cannot personally attend the conference call, please send a representative.

If you have any questions, contact me at 503-986-3327.

Sincerely,

Carol Olsen

Carol Olsen
ODOT *ConnectOregon* Program Manager

GRANT AGREEMENT
ConnectOregon III
MULTIMODAL TRANSPORTATION FUND PROGRAM 2010
Marine Terminal Rehabilitation

THIS GRANT PROGRAM AGREEMENT, hereinafter referred to as "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 "ODOT," and the City of The Dalles, acting by and through its elected officials, hereinafter referred to as "Recipient," hereinafter individually referred to as the "Party" and collectively referred to as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572, and 366.576, state agencies may enter into agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Pursuant to ORS 367.080 through 367.086, there is established the Multimodal Transportation Fund, separate and distinct from the General Fund, allowing for the issuance of lottery bonds for the purpose of financing grants and loans to fund Transportation Projects to public bodies and private entities that involve air, marine, rail or public transit.
3. The Multimodal Transportation Fund Program began through *ConnectOregon*, a \$100 million lottery-bond-based initiative approved by the Oregon Legislative Assembly in 2005 (Oregon Laws 2005, Ch. 816), to invest in air, rail, public transit, and marine transportation projects to ensure Oregon's transportation system is strong, diverse and efficient. The Oregon Legislative Assembly added an additional \$100 million in 2007 (Oregon Laws 2007, Ch. 859) and another \$100 million in 2009 (Oregon Laws 2009, Ch. 865 – HB 2001). The Multimodal Transportation Fund Program is focused on improving the connections between air, rail, marine and transit modes of transportation to reduce transportation costs to businesses, remove key bottlenecks, and increase connectivity.
4. The receipt and use of Multimodal Transportation Funds and the execution of this Agreement by Recipient are subject to conditions imposed by ORS 367.080 through 367.086 and Oregon Administrative Rule (OAR) Chapter 731 Division 35.
5. The Oregon Transportation Commission approved the projects to be funded under the Multimodal Transportation Fund Program at its August 2010 meeting. The OTC

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has set specific conditions on all approved projects and the inability to meet these OTC conditions may result in a loss of project funding. Final approval for the Project is subject to meeting all the OTC conditions as stated below.

6. Safety is of paramount concern to ODOT. ODOT encourages recipients of *ConnectOregon* grant funds to have safety as a high priority for all phases of work.

DEFINITIONS

1. The Multimodal Transportation Fund Program also known as "*ConnectOregon*" as set forth in ORS 367.060 and OAR Ch. 731, Div. 35, is a legislatively authorized lottery-bond-based initiative to invest in air, rail, public transit, and marine transportation projects in Oregon.
2. Recipient, as defined in OAR 731-035-0020(19), means an Applicant that enters into Agreement with ODOT to receive funds from the Multimodal Transportation Fund.
3. *ConnectOregon* Oversight Committee is to be composed of (A) *ConnectOregon* Program Manager, (B) Oregon Department of Aviation Administrator (ODA), (C) ODOT Chief of Staff, (D) ODOT Freight Mobility representative, (E) ODOT Region representative, (F) ODOT Rail Division Administrator and (G) a non-agency representative, appointed by ODOT's *ConnectOregon* Program Manager to address the *ConnectOregon* Program and Project specific issues.

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

TERMS OF AGREEMENT

1. The following documents are attached hereto and by this reference made a part hereof:
 - a. "Exhibit A" – Statement of Work
 - b. "Exhibit B" – Acknowledgement of State Assistance
2. Under such authority, ODOT and Recipient agree that Recipient shall rehabilitate an existing marine terminal, hereinafter referred to as "Project." The Project description, tasks and deliverables, schedule and budget are further described in Exhibit A.
3. The Project cost is estimated at \$3,540,300, which is subject to change. The *ConnectOregon* III grant funds are limited to \$2,055,300 or eighty (80) percent of the total eligible Project costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the \$2,055,300 limit is reached. ODOT cannot

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reimburse Recipient for any work performed, or for Project costs incurred prior to the effective date of this Agreement.

- a. Matching funds must be provided by Recipient in the form of monetary outlay for elements necessary for implementation of the Project, including land, excavation, permits, engineering, payroll, special equipment purchase, rental or lease and cover at least twenty (20) percent of the eligible Project costs. Recipient shall be responsible for the twenty (20) percent match requirement and any costs in excess of the *ConnectOregon* III grant funds.
 - b. If the Project is not completed in accordance with, or consistent with, the application and documents provided by the Recipient to ODOT prior to the execution of the Agreement, incorporated by reference into this Agreement, and this Agreement as they each may be amended, Recipient shall pay back all of the *ConnectOregon* III grant funds to ODOT. Any funds disbursed but not used for the approved Project must be returned to ODOT. Recipient understands eligibility for *ConnectOregon* III grant funds applies only to Project costs incurred on or after the effective date of this Agreement.
4. The term of this Agreement is effective on the date all required signatures are obtained and shall terminate five (5) years from the date of execution.

RECIPIENT OBLIGATIONS

1. Recipient shall perform the work described in Exhibit A.
2. Recipient shall comply with all requirements of ORS 367.080 through 367.086 and Oregon Administrative Rule (OAR) Chapter 731, Division 35.
3. Recipient shall submit to ODOT's Project Liaison for review and approval, monthly invoices and updated monthly progress reports on the Project schedule.
 - a. The invoice must adhere to generally accepted accounting principals and will identify the Project, Agreement number, the Project start and end date, the invoice number or the account number or both, and will itemize all expenses as well as provide a detailed breakdown of funds expended to date and dollars remaining. In the event an invoice is not necessary during a specific period, an updated monthly progress report on the Project schedule must be submitted separately each month reflecting continuous progress.
 - b. The monthly progress report, which must be signed and dated, will be prepared using the *ConnectOregon* III Monthly Progress Report (Form 734-2668), attached by reference and made a part of this Agreement, and will be submitted to the ODOT Project Liaison and the *ConnectOregon* Program Manager, by the

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first Wednesday of each month. The fillable form can be downloaded on-line at the following address:

<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.

- c. If Recipient anticipates the Project key milestones will be delayed by more than ninety (90) days from the key milestones shown in Exhibit A, Recipient shall submit a Request for Change Order (Form 734-2648) to the ODOT's Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the milestone completion date shown in Exhibit A. The fillable form can be downloaded on-line at the following address: <http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.
 - d. Any changes to the Project scope or delivery schedule must be approved by the *ConnectOregon* Oversight Committee or assigned designee prior to execution of an amendment to this Agreement. Recipient shall not proceed with any changes to the Project scope prior to the Change Order being approved by ODOT and the ensuing amendment executed. A Request for Change Order may be rejected at the discretion of the Oversight Committee. The *ConnectOregon* Oversight Committee may choose to request review by the Oregon Transportation Commission. Recipient's obligation to maintain and operate the Project will survive termination of this Agreement.
 - e. Recipient shall submit a written report to ODOT's *ConnectOregon* Program Manager, that identifies the number of jobs created or retained both during construction and after Project completion, as a direct result of this Project. The report must also include the number of jobs projected in the application. The report must be received within three years after the completion of the Project. Recipient's obligation to provide this report will survive termination of this Agreement.
- 4. Recipient must produce and provide all documentation identified in the Project application and in the documents provided by the Recipient to ODOT prior to the execution of the Agreement, which includes the Project key milestones, schedule, budget and cash flow, feasibility, readiness to construct, permits, and complete all other promised elements. The documentation must indicate the likelihood the Project can be completed in the time frame planned.
 - 5. Recipient shall provide documentation of having met all pre-construction requirements, including, but not limited to, meeting all public agency conditions of Project approval and obtaining all Project-specific land entitlements and permits, prior to any construction (labor and material) costs being considered eligible for reimbursement and actually being reimbursed. Project costs will only be reimbursed through the design phase of the Project until all applicable documentation is

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- received. Recipient shall provide this documentation to ODOT's ConnectOregon Program Manager.
6. Recipient shall provide a pre-construction estimate based on the final design prior to any construction (labor and material) costs being considered eligible for reimbursement and actually being reimbursed. Project costs will only be reimbursed through the design phase of the Project until all applicable documentation is received. Recipient shall provide this documentation to ODOT's ConnectOregon Program Manager.
 7. Upon execution of this Agreement, Recipient shall require its Contractor(s) performing the work under this Agreement to name ODOT as an additional obligee on Contractor(s) bond.
 8. Recipient shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the applicable provisions of ORS 279A, 279B and 279C. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
 9. Recipient shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation, its officers and employees from any and all claims, suits, or action of any nature arising out of activities of Recipient, its consultant, its contractor, its officers, subcontractors, agents, or employees under this Agreement. If Recipient is a local public agency, then Recipient's total liability shall not exceed the tort claims limits providing in the Oregon Tort Claims Act, ORS 30.260 and 30.300 for "local public bodies."
 10. Notwithstanding the foregoing defense obligations in the paragraph above, neither Recipient nor any attorney engaged by Recipient shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Recipient is prohibited from defending the State of Oregon, or that Recipient is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any

claims it may have against Recipient if the State of Oregon elects to assume its own defense.

11. Recipient acknowledges and agrees that ODOT, 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 Recipient which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records will be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.
12. If Recipient enters into a construction contract for performance of work on the Project, then Recipient will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless ODOT 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, subcontractors, or agents under the resulting contract.
 - b. Contractor and recipient shall name ODOT as a third party beneficiary of the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to ODOT. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$2,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
 - e. 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 ODOT and its divisions, officers and employees as Additional Insured but only with respect to Contractor's

activities to be performed under this Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.

- f. Notice of Cancellation or Change. There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to ODOT. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
13. Recipient, and its Contractors, shall work as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
14. All employers, including Recipient, that employ subject workers 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. Recipient shall ensure that each of its subcontractors complies with these requirements.
15. Recipient shall, upon execution of this Agreement and as a condition to this Agreement, complete and file with the appropriate County Clerk, Exhibit B, "Acknowledgment of ODOT Assistance" or the filing of a memorandum of this Agreement, including Acknowledgment of ODOT Assistance. Recipient shall provide confirmation of this filing by forwarding to ODOT's ConnectOregon Program Manager a notarized copy of the recorded Exhibit B. By means of said acknowledgment of Recipient'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 or both is recognized and attached to the property as conditions. Any interest in said property by ODOT is proportional to the state participation in Project. While in default of conditions of this Agreement, Recipient will be ineligible to receive state funds from any ODOT-administered program for any project on a street, road or property. The Acknowledgment of ODOT Assistance shall remain in place for the useful life of the Project. The useful life of the Project is defined as twenty (20) years. Reimbursement to Recipient will not be made until a copy of the recorded Exhibit B has been forwarded to the ODOT Project Liaison.
16. Recipient and ODOT's Project Liaison shall, upon completion of all on-site work for the Project, perform an on-site review. Once review is completed, the ODOT Project Liaison shall recommend acceptance of the Project by signing the ConnectOregon III "Recommendation of Acceptance" (Form 734-2649), which will be signed by the

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ODOT Project Liaison and Recipient and is hereby incorporated by reference. The full text of the above referenced exhibit may be reviewed and downloaded at the following web address:

<http://www.oregon.gov/ODOT/HWY/LGS/docs/Forms/COProjectAccept2649.doc>

17. Recipient shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation or service demand or both. ODOT and Recipient agree that the useful life of this Project is defined as twenty (20) years. Recipient has, by submitting its application for this ConnectOregon III grant, represented and certified to sufficient funds and to its ability to operate and maintain the Project. ODOT may conduct periodic inspections following the execution of this Agreement to verify that Project is being properly maintained and continues to serve the purpose for which ConnectOregon III grant funds were provided.
18. Maintenance responsibilities and potential ODOT inspections of the Project shall survive any termination of this Agreement.
19. Recipient certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Recipient, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Recipient and shall provide ODOT proof of such authority upon request.
20. Recipient's Project Manager is Nolan Young, 313 Court St, The Dalles, OR 97058; 541-296-5481 X1118; nyoung@ci.the-dalles.or.us; or assigned designee upon individual's absence. ODOT's Project Liaison shall be notified in writing of any contact information changes during the term of this Agreement.

ODOT OBLIGATIONS

1. Based upon the *ConnectOregon* III grant fund allocation allowed, ODOT agrees to pay Recipient \$2,055,300, or eighty (80) percent of the total eligible Project costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the \$2,055,300 limit is reached.
2. ODOT shall, upon receipt of a monthly invoice and updated monthly progress report on the Project schedule, review for approval and make payment to Recipient for approved eligible costs.
3. This Agreement is contingent upon issuance and sale of lottery bonds sufficient to fund this Project. The Agreement is effective and work may begin upon execution of

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this Agreement, but ODOT's obligation to make Project payments is contingent upon the issuance and sale of lottery bonds by the State Treasurer.

4. ODOT shall monitor the Project for compliance and notify Recipient in writing if it appears Recipient is failing to comply with Multimodal Transportation Fund Program requirements as specified in ORS Chapter 367; OAR Chapter 731, Division 35; the terms of this Agreement; or Recipient's application and documents provided by the Recipient to ODOT prior to the execution of the Agreement.
5. ODOT may impose sanctions against Recipient for failing to comply with the requirements governing the Multimodal Transportation Fund Program. Before imposing sanctions, ODOT will send a notice to cure to Recipient if Recipient fails to comply with Program requirements. ODOT will allow fifteen (15) days from the date the notice to cure is sent for Recipient to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:
 - a. Work on the approved Project has not been substantially initiated within six (6) months of the effective date of this Agreement or if continuous progress on the Project has not been maintained for six (6) months;
 - b. State of Oregon statutory requirements have not been met;
 - c. There is a significant deviation from the terms and conditions of this Agreement or representations of Recipient's application and documents provided by the Recipient to ODOT prior to the execution of the Agreement;
 - d. Significant corrective actions have been found to be necessary to protect the integrity of the funds for the approved Project, and those corrective actions are not, or will not, be made within a reasonable time;
 - e. Key Milestones shown in the Project schedule are delayed by more than ninety (90) days; or
 - f. Failure to submit monthly progress reports as required in Recipient Obligations, Paragraph number 2.
6. One or more of the following sanctions may be imposed if the circumstances listed above are not remedied within the time specified in the notice to cure:
 - a. Revocation of an existing award;
 - b. Withholding of unexpended funds;
 - c. The return of unexpended funds or repayment of expended funds;

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- d. The barring of Recipient from applying for future assistance; or
 - e. Other remedies that may be incorporated into this Agreement.
7. The remedies set forth in this Agreement are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.
8. ODOT's Project Liaison and Recipient shall, upon completion of all on-site work for Project, perform an on-site review. Once review is completed, the ODOT Project Liaison shall recommend acceptance of the Project by signing the *ConnectOregon* III Recommendation of Acceptance (Form 734-2649), which will be signed by the ODOT Project Liaison and Recipient. Upon receipt of signatures by the Parties the ODOT Project Liaison shall forward the original signed copy to the ODOT *ConnectOregon* Program Manager.
9. ODOT's *ConnectOregon* Program Manager is Carol Olsen, Local Government Section, 355 Capitol St. NE, Salem, OR 97301-3871, 503-986-3327, carol.a.olsen@odot.state.or.us, or assigned designee upon individual's absence.

GENERAL PROVISIONS

1. This Agreement may be terminated effective upon delivery of written notice to Recipient, or at such later date as may be established by ODOT under any of the following conditions:
- a. If Recipient fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and within ten (10) days or such longer period as ODOT may authorize, after receipt of written notice from ODOT, fails to correct such failures.
 - b. The Legislature fails to approve, reduces, eliminates or otherwise interferes with appropriations of state expenditure limitation to the extent that legal authority is insufficient to enable ODOT, in its reasonable discretion, to continue making payments under this Agreement.
 - c. ODOT, the Department of Justice, or a court of competent jurisdiction determines that state law, rules, regulation or guidelines are modified, changed, or interpreted in such a way that the activities described in Exhibit A are no longer allowable or no longer eligible for funding proposed by this Agreement.
2. ODOT may impose one or more of the sanctions described under ODOT Obligations, Paragraph 6, without prior notice and without opportunity to cure, in the event ODOT determines:

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- a. Statements, information, or representations in the *ConnectOregon III* application and documents provided by the Recipient to ODOT prior to the execution of the Agreement, for this Project were false, misleading, fraudulent or misrepresentations; or
 - b. There has been a change in circumstances so that information provided in the application and documents provided by the Recipient to ODOT prior to the execution of the Agreement, and relied upon in making the grant or loan, or representations concerning considerations in the selection of this Project for *ConnectOregon III*, pursuant to OAR 731-035-0060, are no longer true or accurate.
3. Recipient may terminate this Agreement effective upon delivery of written notice to ODOT under any of the following conditions:
 - a. ODOT fails to make payments due under this Agreement, or
 - b. ODOT fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and within ten (10) days or such longer period as Recipient may authorize, after receipt of written notice from Recipient, fails to correct such failure.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. ODOT and Recipient are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
6. ODOT and Recipient hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 7a. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

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- b. Any Party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. 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.
 - c. Notwithstanding subsection (b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.
- 8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
 - 9. This Agreement, Project application and documents provided by the Recipient to ODOT prior to the execution of the Agreement, and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of a conflict, the body of this Agreement and the attached Exhibit A will control over the Project application and documents provided by the Recipient to ODOT. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

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

The Oregon Transportation Commission on December 28, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

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The Oregon Transportation Commission at its August 2010 meeting, approved the *ConnectOregon III* project application list and delegated authority to the Director of the Oregon Department of Transportation to enter into project agreements.

City of The Dalles, acting by and
through its elected officials

By _____

Date _____

By _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

Recipient Counsel

Date _____

Recipient Contact:

Nolan Young
City of The Dalles
313 Court St
The Dalles, OR 97058
541-296-5481 X1118
nyoung@ci.the-dalles.or.us

ODOT Contact:

Carol Olsen
ConnectOregon Program Manager
Local Government Section
355 Capitol St. NE
Salem, OR 97301-3871
503-986-3327
carol.a.olsen@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____

Director

Date _____

APPROVAL RECOMMENDED

By _____

Freight Mobility Manager

Date _____

By _____

Local Government Section Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____

Assistant Attorney General

Date _____

EXHIBIT A
Agreement No. 26919
Application Number: M40118
Project Name: Marine Terminal Rehabilitation

A. PROJECT DESCRIPTION

The Project will rehabilitate an existing marine terminal. Restoration activities include construction of a shore side concrete entrance to the pier adjacent to loading zone, replace approximately 35 pilings with new steel pipe, erection of approximately 12-foot wide, 80-foot long pier with 24-foot loading platform, installation of a gib crane, preservation of existing barge mooring, and installation of approximately a six-foot wide, 80-foot long prefabricated gangway.

B. PROJECT KEY MILESTONES AND SCHEDULE

Project has four (4) Key Milestone(s). Key Milestones are used for evaluating performance on Project and determining level of compensation for completed work as described in the Agreement. Key Milestones cannot be changed without an amendment to the Agreement. Recipient may shift the estimated grant funds shown below between milestones without an amendment to the Agreement, but shall not, under any circumstances, exceed the "Total Not To Exceed Grant Fund Allocation". Recipient shall report changes to the Estimated Amounts corresponding to each Key Milestones, shown below, in Recipient's Monthly Report to the ODOT Project Liaison.

If Recipient anticipates the Project Key Milestones will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order to the ODOT Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the Key Milestone completion date shown in this Exhibit.

The anticipated start date of the Project is: 10/25/2010

The estimated completion date of the Project is: 8/1/2012

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date	Estimated Amount
1	Scoping and planning	Complete	N/A
2	Right of way and land acquisition	Complete	N/A

EXHIBIT A

3	Permits	8/31/2010	\$80,000
4	Final plans/bidding engineering documents	8/31/2010	\$519,534
5	Construction contract award	10/25/2010	\$1,000
6	Project completion	8/1/2012	\$2,939,766
	Total Project Cost		\$3,540,300

Table 2 – Funding Breakdown

A	Total Not To Exceed Grant Fund Allocation	\$2,055,300	
B	ConnectOregon III 20 percent required match	\$513,825	
C	ConnectOregon III Total		\$2,569,125
D	Other Funds In Addition to 20 percent Required Match	\$971,175	
E	Total Project Funding		\$3,540,300

C. BUDGET

Total Not To Exceed payable to Recipient is \$2,055,300.

Total Project costs are estimated at \$3,540,300. The *ConnectOregon III* grant fund allocation for this Project is \$2,055,300. Recipient shall be responsible for any unanticipated costs over the identified *ConnectOregon III* Grant Fund Allocation.

EXHIBIT B

Agreement Number: 26919

Project Name: Marine Terminal Rehabilitation

After recording, return to:

ACKNOWLEDGMENT OF STATE ASSISTANCE

The property and assets under the jurisdiction of City of The Dalles, were improved with assistance from the State of Oregon, Department of Transportation under an agreement executed between City of The Dalles, and the Oregon Department of Transportation (ODOT) dated _____. Such assistance was provided to City of The Dalles, in reimbursement of costs associated with the Marine Terminal Rehabilitation. The use and disposition of said property is subject to the terms of the above noted Agreement, copies of which may be obtained from the Director of ODOT.

By : _____

Title : _____

State of Oregon)

County of _____)

SUBSCRIBED and SWORN to before me this _____ day of _____, 20__

NOTARY PUBLIC FOR OREGON

My commission expires: _____